Supreme Court, U.S.
FILED
AUG 21 1997
CLERK

No. 96-1590

In the Supreme Court of the United States

OCTOBER TERM, 1996

FEDERAL ELECTION COMMISSION, PETITIONER

v.

JAMES E. AKINS, RICHARD CURTISS, PAUL FINDLEY, ROBERT J. HANKS, ANDREW KILLGORE, AND ORIN PARKER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED: APRIL 7, 1997
CERTIORARI GRANTED: JUNE 16, 1997

181 pp

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil No. 92-CV-1864

JAMES E. AKINS, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION

[Filed: 8/12/92]

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
8/12/92	1	COMPLAINT filed; Exhibits (7); summons (3) issued (ks) [Entry date 08/18/92]
	* * * * *	
10/8/92	7	ANSWER for defendant FEC, (1pp) [Entry date 10/09/92]
	* * * * *	

1/7/93	22	AMENDED COMPLAINT by plaintiff(s) amending complaint [1-1] (1pp) [Entry date 01/27/93]
	* * * * *	
8/31/93	29	ANSWER by defendant FEC to amended complaint (1pp) [Entry date 09/01/93]
	* * * * *	
11/4/93	38	MOTION filed by plaintiff(s) for summary judgment, Exhibits: (11) (1pp) [Entry date 11/08/93]
	* * * * *	
12/17/93	43	MOTION filed by defendant FEC for summary judgment (1pp) [Entry date 12/20/93]
	* * * * *	
1/3/94	46	RESPONSE by plaintiffs in opposition to motion for summary judgment [43-1] by FEC. (ab) [Entry date 01/04/94]
1/3/94	47	REPLY by plaintiffs to response to motion for summary judgment [38-1] by plaintiffs (ab) [Entry date 01/04/94]

1/14/94	48	REPLY by defendant to response to motion for summary judgment [43-1] by FEC (ab) [Entry date 01/24/94]
	* * * * *	
1/26/94	—	MOTION HEARING before Judge June L. Green: by FEC motion for summary judgment [43-1] heard and taken under advisement; by plaintiffs motion for summary judgment [38-1] heard and taken under advisement. Reporter: Bill Rhodes (ab)
3/30/94	50	OPINION by Judge June L. Green (N) (bjl)
3/30/94	51	ORDER by Judge June L. Green: granting motion for summary judgment [43-1] by FEC, denying motion for summary judgment [38-1] by plaintiffs; dismissing this case with prejudice. (N) (bjl)
4/22/94	52	NOTICE OF APPEAL by plaintiff(s) RICHARD CURTISS, plaintiff(s) GEORGE BALL, plaintiff(s) JAMES E. AKINS,

plaintiff(s) ORIN PARKER, plaintiff(s) ANDREW I. KILLGORE, plaintiff(s) ROBERT J. HANKS, plaintiff(s) PAUL FINDLEY from order dismissing this case with prejudice. * * * [Entry date 4/25/94]

* * * * *

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-5088

JAMES E. AKINS, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION

[Filed: 4/26/94]

DOCKET ENTRIES

DATE	PROCEEDINGS
4/26/94	CIVIL-US CASE docketed. Notice of Appeal filed by Appellant James E. Akins, Appellant George Ball, Appellant Richard Curtiss, Appellant Paul Findley, Appellant Robert J. Hanks, Appellant Andrew I. Killgore, Appellant Orin Parker [51180-1] (lrn)
	* * * * *
3/10/95	ORAL ARGUMENT HELD before Edwards, Silberman, Sentelle (ddm)
3/13/95	PER CURIAM ORDER filed directing the parties to file supplemental briefs

nte 20 pages by 3/27/95; The supplemental briefs shall be limited to addressing the following issue: Whether, in a case of this sort, there can be standing based on a citizen's right to receive information under the disclosure provisions of this statute, and/or whether appellants can satisfy standing requirements by showing that they have been injured as political competitors of AIPAC. [110012-1] Before Judges Edwards, Silberman, Sentelle. (cwc)

* * * * *

9/29/95 JUDGMENT for the reasons in the accompanying opinion affirming. [152589-1] Before Judges Edwards, Silberman, Sentelle. (edb)

9/29/95 OPINION (14 pgs) for the Court filed by Judge Sentelle, CONCURRING IN PART & DISSENTING IN PART OPINION (13 pgs) filed by Judge Silberman. (edb)

* * * * *

11/1/95 PER CURIAM ORDER filed amending concurring in part and dissenting in part opinion filed by Laurence H. Silberman [152590-2]. Before Judges Edwards, Silberman, Sentelle. (edb)

11/13/95 PETITION for rehearing [162229-1] and SUGGESTION, for rehearing en banc [162229-2] (19 copies) filed by Appellants James E. Akins, et al. (c/s dated 11/13/95). (lvs)

* * * * *

1/26/96 PER CURIAM ORDER filed denying appellant's petition for rehearing [162229-1] filed November 13, 1995. Before Judges Edwards, Silberman, and Sentelle. [CIRCUIT JUDGE SILBERMAN WOULD GRANT THE PETITION FOR REHEARING]. (jth)

1/26/96 PER CURIAM ORDER, In Banc, filed granting the suggestion for rehearing in banc [162229-2]. This case will be considered and decided by the court sitting In Banc on both the standing and statutory construction issues. FURTHER ORDERED, by the Court, In Banc, that the judgment filed on September 29, 1995 is vacated. A future order will govern further proceedings. Before Judges: Edwards, Wald, Silberman, Buckley, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers, and Tatel. (jth)

* * * * *

5/8/96 ORAL ARGUMENT HELD before Edwards, Wald, Silberman, Buckley, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers, Tatel. (ddm)

* * * * *

12/6/96 JUDGMENT for the reasons in the accompanying opinion reversing [239295-1]. Before Judges Edwards, Wald, Silberman, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers, Tatel, Buckley *.* At the time of in banc

argument, Judge Buckley was a circuit judge in active service. He assumed senior status 9/1/96. (edb)

12/6/96 IN BANC OPINION (23 pgs) for the Court filed by Judge Silberman, DISSENTING OPINION (9 pgs) filed by Judge Sentelle with whom Circuit Judge Henderson joins. (edb)

* * * * *

1/3/97 PER CURIAM ORDER, In Banc, filed amending In Banc opinion filed by Circuit Judge Laurence H. Silberman [239302-1]. Before Judges Edwards, Wald, Silberman, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers, Tatel, Buckley. (edb)

* * * * *

4/10/97 NOTICE filed by Clerk, Supreme Court of the United States, informing the court that a writ of certiorari was filed April 7, 1997 and placed on the docket April 8, 1997 in case No. 96-1590 [264958-1]. (lvs)

6/17/97 NOTICE filed by Clerk, Supreme Court, advising of the entry of an order on 06/16/97, granting the petition for writ of certiorari. Supreme Court Docket No. 96-1590. [279831-1]. (jth)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 92-1864 (JLG)

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DEFENDANT

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiffs bring this action for declaratory and injunctive relief against the Federal Election Commission (hereinafter "FEC"). Pursuant to 2 U.S.C. § 437g(a)(8) plaintiffs are entitled to file this action against the FEC for its dismissal of their complaint against the American Israel Public Affairs Committee (hereinafter "AIPAC").

2. The FEC's investigation and resolution of plaintiffs' complaint failed to meet the requirements of the Federal Election Campaign Act of 1971, as amended (hereinafter "Campaign Act"). The FEC failed to make a proper determination whether AIPAC must register as a political committee and comply with the disclosure provisions of 2 U.S.C. § 434(a). In the alternative, the FEC improperly failed to address whether AIPAC must comply with the disclosure provisions of 2 U.S.C. § 434(c)(i), which apply to organizations that are not political committees.

3. According to these provisions, AIPAC, either as a political committee or as an organization making campaign expenditures exceeding $250 per year, should report the sources of its money and all campaign expenditures and contributions. Although the FEC found that AIPAC made illegal corporate expenditures in federal campaigns, and the amount of these expenditures clearly exceeded $250 per year, the FEC did not require AIPAC either to register as a political committee or to comply with the disclosure provisions applicable to others who make expenditures or contributions exceeding this statutory threshold.

4. The FEC's improper action has harmed the electoral and political processes. It has undermined policies of the Campaign Act intended to limit the effect of any one special interest group on candidates, and to ensure that the sources, amounts, and beneficiaries of interest group political expenditures are exposed to public view.

5. The FEC's improper action has injured plaintiffs. Plaintiffs are politically active persons who, individually or as members of organizations, oppose AIPAC views on U.S. foreign policy in the Middle East. On this subject, plaintiffs compete with AIPAC in seeking to influence the views and actions of members of Congress, executive policymakers, and the public. The FEC's improper action on plaintiffs' administrative complaint has given AIPAC an illegal advantage in this competition. It has enabled AIPAC to supplement its political lobbying with unreported campaign expenditures derived from secret sources.

6. The FEC's improper action has deprived plaintiffs of their legal right to learn the sources, amounts, and beneficiaries of AIPAC's unreported

campaign expenditures. The unavailability of this information to plaintiffs impedes their efforts to show legislative and executive policymakers and the public that AIPAC's great influence on U.S. foreign policy stems not from the merits of its views but principally from its ability to wield enormous financial power, through means including campaign spending.

7. By depriving plaintiffs of their legal right to information useful to their efforts to oppose AIPAC's grip on the American political and electoral processes, the FEC illegally has disadvantaged plaintiffs, causing them to suffer "diminution in their political voices—their influence in federal elections." *International Association of Machinists and Aerospace Workers v. Federal Election Commission*, 678 F.2d 1092, 1098 (D.C. Cir. 1982). Grant of the relief sought by plaintiffs would provide plaintiffs the information to which they are legally entitled and would remove the unlawful advantage enjoyed by AIPAC in its political competition with plaintiffs.

JURISDICTION AND VENUE

8. This Court has jurisdiction of this action under 28 U.S.C. § 1331, and 2 U.S.C. § 437g(a)(8)(A).

9. Venue resides in this district pursuant to 2 U.S.C. § 437g(a)(8)(A), and 28 U.S.C. § 1391(b) and (e).

PARTIES

10. **Plaintiffs:**

(a) James E. Akins is a citizen of the United States over the age of 18 years and a registered voter in the District of Columbia. He is a former United States Ambassador. He has been and continues to be active in seeking to influence policymakers and the public on U.S. policy in the Middle East. He writes

and speaks widely on this subject. Many of the views he holds and seeks to impart on this subject are opposed to AIPAC's views. The action of the FEC giving rise to this complaint has injured him in the manner stated in paragraphs 5-7 above.

(b) George Ball is a citizen of the United States over the age of 18 years and a registered voter in the State of New Jersey. He is a former United States Undersecretary of State. He has been and continues to be active in seeking to influence policymakers and the public on U.S. policy in the Middle East. He writes and speaks widely on this subject. Many of the views he holds and seeks to impart on this subject are opposed to AIPAC's views. The action of the FEC giving rise to this complaint has injured him the manner stated in paragraphs 5-7 above.

(c) Richard Curtiss is a citizen of the United States over the age of 18 years and a registered voter in the State of Maryland. He is a former Chief Inspector of the United States Information Agency. He has been and continues to be active in seeking to influence policymakers and the public on U.S. policy in the Middle East. He is an active member of the Council for the National Interest (hereinafter "CNI"). This organization is a national non-profit membership association organized and registered in the District of Columbia under § 501(c)(4) of the Internal Revenue Code of 1986, as amended. CNI's purposes include organizing of its members in each congressional district to lobby and to communicate with policymakers and the public in favor of a foreign policy in the Middle East that is balanced and supportive of the human, political and territorial rights of all the peoples of the region, including Palestinians

and the other Arab peoples. Many of the views CNI and plaintiff hold and seek to impart are opposed to AIPAC's views. The action of the FEC giving rise to this complaint has injured plaintiff in the manner stated in paragraphs 5-7 above.

(d) Paul Findley is a citizen of United States over the age of 18 years and a registered voter in the State of Illinois. He is a former member of the House of Representatives from the State of Illinois. He is the founder and Chairperson of CNI. In this capacity, and individually, he has been and continues to be active in seeking to influence policymakers and the public on U.S. policy in the Middle East. He writes and speaks often on this subject. Many of the views CNI and plaintiff hold and seek to impart are opposed to AIPAC's views. The action of the FEC giving rise to this complaint has injured plaintiff in the manner stated in paragraphs 5-7 above.

(e) Robert J. Hanks, R. Adm. U.S.N. (Ret.), is a citizen of the United States over 18 years and a registered voter in the State of Virginia. He has been and continues to be active in seeking to influence policymakers and the public on U.S. policy in the Middle East. Many of the views he holds and seeks to impart on this subject are opposed to AIPAC's views. The action of the FEC giving rise to this complaint has injured him in the manner stated in paragraphs 5-7 above.

(f) Andrew I. Killgore is a citizen of the United States over the age of 18 years and a registered voter in the State of Florida. He is a former United States Ambassador. He has been and continues to be active in seeking to influence policymakers and the public on U.S. policy in the Middle East. He is an active member of CNI. Many of the views CNI and plaintiff

hold and seek to impart are opposed to AIPAC's views. The action of the FEC giving rise to this complaint has injured plaintiff in the manner stated in paragraphs 5-7 above.

11. **Defendant:**

The Federal Election Commission is an independent agency of the United States Government and is responsible for the enforcement of the provisions of the Campaign Act.

12. **Other Entity:**

AIPAC is an incorporated, tax-exempt lobbying organization having 50,000 supporters. It lobbies the administration and Congress to maintain a high level of foreign aid to Israel, to limit U.S. aid and sales to Arab countries, and to pursue other policies deem ed in Israel's interest. Because of its ability to influence adversely the election or re-election of any congressional candidate or incumbent who acts or speaks contrary to its views, and, conversely, because of its ability to enhance the election prospects of its favored candidates, AIPAC is one of the most influential lobbying organizations in the United States. A major purpose of AIPAC is to control congressional action by supporting and promising to support election or re-election of members willing to favor AIPAC positions, and by opposing and threatening to oppose election or re-election of those who are not willing to favor AIPAC positions. AIPAC operates a political department which collects and transmits information to AIPAC members and pro-Israel political committees (PACs) concerning current or upcoming campaigns for federal and other

public offices. This information includes candidate position papers, voting records, and publicly available financial information disclosed by others to the FEC. AIPAC's campaign and political activities also include those described in the section below entitled Additional Operative Facts.

STATUTORY AND REGULATORY BACKGROUND

Procedural Statutes

13. 2 U.S.C. § 437g(a)(1) provides that any person who believes that a violation of the Campaign Act has occurred or is about to occur may file a complaint with the FEC. The plaintiffs filed their complaint, Matter Under Review (hereinafter "MUR") No. 2804, pursuant to this provision.

14. 2 U.S.C. § 437g(a)(2) requires the FEC, upon receipt of a properly executed complaint, to conduct an investigation of the allegations raised by the complaint if it finds "reason to believe" that a violation of the Campaign Act has occurred or is about to occur. If the FEC does not find reason to believe a violation occurred or is about to occur it may dismiss the complaint.

15. 2 U.S.C. § 437g(a)(8)(A), (B), and (C) provide that, if the FEC dismisses a complaint filed under 2 U.S.C. § 437g(a)(1), any aggrieved party may file a petition, within 60 days of the dismissal, in the United States District Court for the District of Columbia asking the court (1) to declare the FEC's dismissal of the complaint "arbitrary, capricious, and contrary to law" pursuant to 5 U.S.C. § 706(2), and (2) to direct the FEC to proceed in conformity with such declaration within 30 days.

Substantive Statutes, Regulations and Constitutional Limitations

16. 2 U.S.C. § 431(4) and 11 CFR § 100.5(a) define a political committee to be a "committee, club, association, or other group of persons . . . which makes expenditures aggregating in excess of $1,000 during a calendar year . . . ." This definition, when applied to organizations having as a major purpose the nomination or election of candidates, does not infringe the constitution. *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *In the Matter of American Israel Public Affairs Committee*, MUR 2804 (FEC June 16, 1992), General Counsel's Brief, January 30, 1992, at 2.

17. 2 U.S.C. § 431(8)(a)(i) defines the term "contribution" as any gift, subscription, loan, advance, or deposit of money or anything of value made by a person for the purpose of influencing a federal election.

18. 2 U.S.C. § 431(9)(A)(i) defines the term "expenditure" as any purchase, payment, distribution, loan, deposit, or gift of money of anything of value, made by any person for the purpose of influencing a federal election.

19. 2 U.S.C. §§ 433 and 434 provide that, when an organization qualifies as a political committee pursuant to 2 U.S.C. § 431(4), the organization must register and file periodic reports of its receipts and disbursements with the FEC. Regarding organizations that do not meet the definition of a political committee, 2 U.S.C. § 434(c)(1) states that "[e]very person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of $250 during a calendar year shall file a statement containing the information required

under subsection (b)(3)(A) of this section [concerning identification of contributors] for all contributions received by such person." This provision may be applied to AIPAC without infringing the constitution. *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986) (hereinafter "MCFL").

20. 2 U.S.C. § 441b prohibits corporations, including AIPAC, from making contributions or expenditures in connection with a federal election. It prohibits communications made in cooperation, consultation, or coordination with a candidate which urge support for the candidate or provide campaign assistance. *MCFL* at 249. *Buckley* at 46 n.53 (1976). Internal corporate communications to persons having significant financial or organizational attachment to the corporate structure, however, are excepted from the ban. 2 U.S.C. § 441(b)(2)(A) and (4)(C); *Federal Election Commission v. National Right to Work Committee*, 459 U.S. 197, 204 (1982).

THE FEC PROCEEDINGS

21. Pursuant to the Campaign Act, as amended, 2 U.S.C. § 437g(a)(1), the plaintiffs in this action filed with the FEC an administrative complaint, designated MUR No. 2804, against AIPAC and twenty-seven other PACs (original complaint Exhibit B). The complaint alleged that under the Campaign Act, (1) AIPAC is a political committee; (2) AIPAC and twenty-seven other political committees are affiliated with one another; (3) AIPAC improperly failed to disclose its election-related activity to the FEC; and (4) AIPAC made illegal campaign expenditures.

22. On November 29, 1989, the FEC General Counsel issued the "General Counsel's Report" for MUR

No. 2804. (Original complaint Exhibit C). After evaluating respondents' answer to the complaint, the General Counsel found evidence that members of the twenty-seven PACs have served or are serving as AIPAC officers; that members of some of these PACs had attended AIPAC's annual Policy Conference and received information on candidates' voting records on issues concerning Israel; and that similar patterns of contributions existed among some of the pro-Israel PACs. (Report at 102.) The General Counsel, however, found insufficient evidence to recommend the FEC find reason to believe AIPAC and the twenty-seven PACs are affiliated, because the General Counsel found insufficient evidence that AIPAC established, finances, controls or maintains any of these PACs.

23. On December 19, 1989, the FEC found no reason to believe AIPAC and the PACs were affiliated. The FEC left in abeyance the questions concerning the AIPAC's status as a political committee, its violation of disclosure provisions, and its illegal corporate contributions. (Original complaint, Exhibit D.)

24. The General Counsel investigated these remaining allegations and issued a report, dated May 29, 1992. Although the General Counsel found probable cause to believe AIPAC violated 2 U.S.C. § 441b, regarding illegal corporate expenditures, the General Counsel found no probable cause to believe that AIPAC was a political committee. (Original complaint, Exhibit E.) The General Counsel reached this conclusion by finding that AIPAC's "political activities did not rise to such a level as to make them a major purpose of the organization." MUR 2804 (FEC June 16, 1992), General Counsel's Brief,

January 30, 1992, at 2. In announcing this finding, the General Counsel stated no criteria for determining what level, or type, of political activity meets the "major purpose" standard. Nor did the General Counsel issue a finding stating, under the criteria, what AIPAC's level or type of political activity was. In the absence of articulated criteria and findings thereunder, the General Counsel was unable to state, and thus did not state, the reason why AIPAC's political activity was not a major purpose of the organization. Also, though the value of AIPAC's illegal corporate expenditures clearly exceeded the $250 threshold set by 2 U.S.C. § 434(c), the General Counsel made no finding regarding AIPAC's obligation to file disclosure reports under that provision. The General Counsel's report contains no mention of this requirement.

25. On June 16, 1992, the FEC made a final determination regarding the allegations addressed in the General Counsel's May 29, 1992 report. Adopting without elaboration the General Counsel's conclusion, the FEC found no probable cause that AIPAC was a political committee. The FEC found probable cause that AIPAC violated 2 U.S.C. § 441b, but it took no further action. (Original complaint, Exhibit G.) In its Statement of Reasons, dated July 27, 1992, the FEC held that since the AIPAC situation presented a "close question," and the FEC's own policies regarding exempt internal corporate political communications needed clarification, regulatory proceedings needed to be conducted before penalties would be imposed. (Original complaint, Exhibit F.) The FEC did not mention AIPAC's obligation to file reports disclosing its political activities and sources of funds under 2 U.S.C. § 434(c).

ADDITIONAL OPERATIVE FACTS

26. AIPAC sent internal memos to pro-Israel PACs which indicate that AIPAC was actively involved with trying to help raise money for several candidates in congressional elections. (Original complaint, Exhibits A-2 and A-10.)

27. In 1986 the Pro-Israel PACs donated nearly $7 million to candidates, sometimes more than $200,000 to a single candidate. (Original complaint, Exhibit A-3).

28. Upon information and belief, according to a computer-aided analysis of the 1986 FEC reports, no fewer than 51 pro-Israel PACs are operated by AIPAC officials or people who hold seats on AIPAC's two major policy-making bodies. (Original complaint, Exhibit A-5).

29. AIPAC regularly holds political leadership development program workshops to instruct pro-Israel groups in PAC formation and fund-raising. (Original complaint, Exhibit A-13).

30. Officers of the pro-Israel PACs often consult AIPAC about candidates' voting records, and many members of AIPAC sit on the boards of those committees. (Original complaint, Exhibit A-17).

31. AIPAC has made corporate contributions and expenditures in federal election campaigns in excess of $5,000.

CAUSE OF ACTION 1 - FAILURE TO DEEM AIPAC A POLITICAL COMMITTEE AND INADEQUATE FINDINGS, REASONS AND INVESTIGATION AS TO THIS ISSUE

32. Plaintiffs reallege paragraphs 1-31.

33. The FEC's decision that AIPAC is not a political committee is contrary to law. The existing record shows both that AIPAC's political activities meet the statutory definition of a political committee and that a major purpose of the organization is to control congressional action by influencing, and promising or threatening to influence, congressional elections. AIPAC therefore is properly subject to the registration and disclosure requirements of 2 U.S.C. §§ 433 and 434. The FEC's statement that AIPAC's "political activities did not rise to such a level as to make them a major purpose of the organization" misconstrues the "major purpose" standard of *Buckley v. Valeo*. Under *Buckley*, an organization is a political committee if (a) it has as a major purpose the influencing of federal elections and (b) its campaign expenditures or contributions are above the monetary level set by Congress, $1,000. Whether a major purpose of an organization is to influence federal elections is not determined merely by its level of campaign spending, expressed as either an absolute amount or a percentage of its total budget. An organization's major purposes are determined by the type and intent of its activities viewed as a whole. If a major purpose of an organization, as revealed by the type and intent of its activities, is to influence congressional elections, the organization must register as a political committee if the monetary level of its election expenditures or contributions exceeds the $1,000 statutory threshold. The existing record

shows AIPAC meets both aspects of the applicable legal test.

34. In addition, the FEC's decision is arbitrary and capricious, and therefore in violation of § 437g(a)(8), because the Commission (a) failed to state criteria for determining, under the *Buckley* test, an organization's major purposes; (b) failed to make findings under those criteria regarding the AIPAC; and (c) consequently failed to state a sufficient reason for not finding AIPAC to be a political committee.

35. The existing record contains sufficient evidence to support a finding under the proper legal standard that AIPAC is a political committee, but it is also true that the FEC investigation failed to seek additional readily available evidence that would make this conclusion even more compelling. Therefore, if, contrary to our view, the evidence of record is determined insufficient to show AIPAC is a political committee, the insufficiency of the evidence is the result of the inadequacy of the FEC's investigation. The FEC's investigation was inadequate, and therefore arbitrary and capricious, because it was unguided by proper criteria for identifying the major purposes of an organization under the *Buckley* test. It did not focus, and therefore did not seek additional readily available evidence, on the type and intent of AIPAC's activities, viewed as a whole. Nor did it gather additional readily available evidence on the magnitude and impact of those activities. Most of the evidence gathered by the FEC was obtained for a narrow purpose—to assess whether AIPAC is affiliated with acknowledged pro-Israel political committees. In addressing this question the FEC did gather evidence indicating the type, intent, magnitude, and impact of AIPAC's activities, but the FEC's focus was on

whether the stringent legal standard for affiliation was met. It did not elaborate and focus on the question of AIPAC's major purposes, in order to apply properly the *Buckley* test. Consequently, additional readily available evidence relevant to this latter question was not sought or obtained.

CAUSE OF ACTION 2, IN THE ALTERNATIVE - FAILURE TO REQUIRE AIPAC'S COMPLIANCE WITH, OR EVEN TO ADDRESS AIPAC'S VIOLATION OF, DISCLOSURE OBLIGATIONS IMPOSED BY 2 U.S.C. § 434(c)

36. Plaintiffs reallege paragraphs 1-31.

37. The FEC's failure to find that AIPAC was obliged to comply with the disclosure provisions of 2 U.S.C. § 434(c) was—in light of the evidence showing AIPAC political expenditures well in excess of that provision's $250 threshold—contrary to law. This provision applies to organizations not deemed to be political committees. Plaintiffs' claim under this provision is alternative to their first cause of action.

38. In addition, and also alternatively to plaintiffs' first cause of action, the FEC's failure to issue any findings and reasons at all with respect to AIPAC's obligation to comply with the disclosure provisions of 2 U.S.C. § 434(c) was—in light of the evidence showing AIPAC political expenditures well in excess of that provision's $250 threshold—arbitrary and capricious, and therefore in violation of § 437g(a)(8).

RELIEF

39. Plaintiffs ask the Court to

a. assume jurisdiction of this case;

b. declare the FEC's decision that AIPAC is not a political committee to be contrary to law and arbitrary and capricious, remand the matter to the FEC, and order the agency to remedy the deficiencies in its investigation and decision of this question;

c. in the alternative to 39.b., declare the FEC's failure to find AIPAC obligated to comply with the disclosure provisions of 2 U.S.C. § 434(c) to be contrary to law and arbitrary and capricious, remand the matter to the FEC, and order the agency properly to address this question;

d. award plaintiffs their costs and attorneys' fees;

e. afford plaintiffs such additional or alternative relief as the Court deems just.

Respectfully submitted,

/s/ DANIEL M. SCHEMBER
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 92-1864 (CRR)

JAMES E. AKINS, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, DEFENDANT

ANSWER TO FIRST AMENDED COMPLAINT

PLAINTIFF FEDERAL COMMISSION'S ANSWER TO FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Defendant Federal Election Commission (the "Commission"), through its undersigned counsel, responds as follows to the first amended complaint in this litigation:

I. Answering specifically the allegations of the first amended complaint, the Commission responds to the particular paragraphs thereof as follows:

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. ADMIT.
2. DENIED.
3. ADMIT that the Commission found no probable cause to believe that the American Israel Public

Affairs Committee ("AIPAC") violated 2 U.S.C. §§ 433 and 434, and, therefore, AIPAC was not required to register as a political committee and report "the sources of its money and all campaign expenditures and contributions." ADMIT that the Commission found probable cause to believe that AIPAC violated 2 U.S.C. § 441b but determined to take no further action and to close the file.

4. DENIED.

5. The Commission is without knowledge or information sufficient to for a belief as to the plaintiffs' injury, if any, as a result of the Commission's finding of no probable cause to believe that AIPAC violated 2 U.S.C. §§ 433 and 434. The Commission is without knowledge or information sufficient to form a belief as to whether the plaintiffs "are politically active persons who, individually or as members of organizations, oppose AIPAC views on U.S. foreign policy in the Middle East." The Commission is without knowledge or information sufficient to form a belief as to whether the plaintiffs "compete with AIPAC in seeking to influence the views and actions of members of Congress, executive policymakers and the public." DENY that the Commission's action on the plaintiffs' administrative complaint "has given AIPAC an illegal advantage in this competition." DENY that the Commission's action on the plaintiffs' administrative complaint "has enabled AIPAC to supplement its political lobbying with unreported campaign expenditures derived from secret sources."

6. DENY that the Commission's action on the plaintiffs' administrative complaint "has deprived plaintiffs of their legal right to learn the sources, amounts, and beneficiaries of AIPAC'S unreported campaign expenditures." The Commission has no

knowledge whether "[t]he unavailability of this information to plaintiffs impedes their efforts to show legislative and executive policymakers and the public that AIPAC's great influence on U.S. foreign policy stems not from the merits of its views but principally from its ability to wield enormous financial power, through means including campaign spending."

7. DENIED.

JURISDICTION AND VENUE

8. DENY that 28 U.S.C. § 1331 confers subject matter jurisdiction in this litigation, but ADMIT that this Court has statutory jurisdiction under 2 U.S.C. § 437g(a)(8)(A) to review the Commission's dismissal of the allegations contained in the plaintiffs' administrative complaint.

9. ADMIT.

PARTIES

10(a)-(f). The Commission is without knowledge or information sufficient to form a belief as to the information contained in paragraphs 10(a)-(f).

11. ADMIT.

12. ADMIT that AIPAC is an incorporated, tax-exempt lobbying organization which is reported to have approximately 50,000 supporters. ADMIT that AIPAC lobbies the administration and Congress and communicates with its supporters. The Commission is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 12.

STATUTORY AND REGULATORY BACKGROUND

Procedural Statutes

13-15. Paragraphs 13, 14 and 15 contain plaintiffs' conclusions of law as to which no response is required since those statutory provisions speak for themselves.

Substantive Statutes, Regulations and Constitutional Limitation

16-20. Paragraphs 16 through 20 contain plaintiffs' conclusions of law as to which no response is required since those statutory provisions and reported case decisions speak for themselves.

THE FEC PROCEEDINGS

21. ADMIT that the plaintiffs filed an administrative complaint, designated as Matter Under Review ("MUR") 2804. As to the plaintiffs' characterization of the administrative complaint, no response is necessary as that document speaks for itself.

22. ADMIT that on November 29, 1991, the Office of the General Counsel of the Commission issued a General Counsel's Report (Plaintiffs' Exhibit C to the Original Complaint) in MUR 2804. ADMIT that the General Counsel recommended that the Commission find no reason to believe that AIPAC and twenty-seven political action committees violated 2 U.S.C. § 441(a)(2)(A) by reason of affiliation. As to the plaintiffs' characterization of that report, no response is necessary as that document speaks for itself.

23. ADMIT that on December 19, 1989, the Commission found no reason to believe that AIPAC

violated 2 U.S.C. § 441a(a)(2)(A) by reason of affiliation. As to the plaintiffs' characterization of the Commission's Certification (Plaintiffs' Exhibit D to the Original Complaint), no response is necessary as that document speaks for itself.

24. ADMIT that on May 29, 1992, the Office of the General Counsel issued a General Counsel's Report in MUR 2804 recommending that the Commission find no probable cause to believe that AIPAC violated 2 U.S.C. §§ 433 and 434 and that the Commission find probable cause to believe that AIPAC violated 2 U.S.C. § 441b. As to the plaintiffs' characterization of that report (Plaintiffs' Exhibit E to the Original Complaint), no response is necessary as that document speaks for itself.

25. ADMIT that on June 16, 1992, the Commission found no probable cause to believe that AIPAC violated 2 U.S.C. §§ 433 and 434. ADMIT that on that same date, the Commission found probable cause to believe that AIPAC violated 2 U.S.C. § 441b but determined to take no further action and to close the file. As to the plaintiffs' characterization of the Commission's Certification (Plaintiffs' Exhibit G to the Original Complaint), no response is necessary as that document speaks for itself. ADMIT that on July 27, 1992, four Commissioners issued a Statement of Reasons in connection with MUR 2804. As to the plaintiffs' characterization of that Statement of Reasons (Plaintiffs' Exhibit F to the Original Complaint), no response is necessary as that document speaks for itself.

ADDITIONAL OPERATIVE FACTS

26. DENY that the administrative record establishes that "AIPAC sent internal memos to pro-Israel PACs which indicate that AIPAC was actively involved with trying to help raise money for several candidates in congressional elections." ADMIT that AIPAC circulated an internal memorandum dated September 30, 1986 to its staff (Plaintiffs' Exhibit A-2 to the Original Complaint) and an internal memorandum dated November 3, 1987 to its staff (Plaintiffs' Exhibit A-6 to the Original Complaint). As to the plaintiffs' characterization of these memoranda, these documents speak for themselves, and therefore, no further response is necessary.

27. DENY that the administrative record established that "[i]n 1986 the Pro-Israel PACs donated nearly $7 million to candidates, sometimes more than $200,000 to a single candidate."

28. ADMIT that the plaintiffs alleged in their administrative complaint that "according to a computer-aided analysis of the 1986 FEC reports, no fewer than 51 pro-Israel PACs are operated by AIPAC officials or people who hold seats on AIPAC's two major policy-making bodies." However, the Commission is without knowledge or information sufficient to form a belief as to whether this allegation is true.

29. DENY that the administrative record establishes that "AIPAC regularly holds political leadership development program workshops to instruct pro-Israel groups in PAC formation and fund-raising." ADMIT that AIPAC conducts political education seminars and workshops for people that AIPAC

claims to be its members at its annual policy conferences.

30. DENY that the administrative record establishes that "[o]fficers of the pro-Israel PACs often consult AIPAC about candidates' voting records, and many members of AIPAC sit on the boards of those committees." ADMIT that AIPAC communicates with some people that AIPAC claims to be its members about the voting records and positions of incumbent members of Congress. ADMIT that some people that AIPAC claims to be its members also participate in political committees.

31. DENY that the administrative record established that "AIPAC has made corporate contributions and expenditures in federal election campaigns in excess of $5,000."

CAUSE OF ACTION 1 - FAILURE TO DEEM AIPAC A POLITICAL COMMITTEE AND INADEQUATE FINDINGS, REASONS AND INVESTIGATION AS TO THIS ISSUE

32. The Commission incorporates by reference its response to paragraphs 1 through 31.

33. DENY that the Commission's finding that AIPAC did not qualify as a political committee within the meaning of the Federal Election Campaign Act of 1971, as amended, is contrary to law. DENY that the administrative record established "both that AIPAC's political activities meet the statutory definition of a political committee and that a major purpose of the organization is to control congressional action by influencing, and promising or threatening to influence, congressional elections." DENY that AIPAC is subject to the registration and disclosure requirements of 2 U.S.C. §§ 433 and 434. The remaining

allegations in paragraph 33 contain plaintiffs' conclusions of law to which no response is necessary since *Buckley v. Valeo*, 424 U.S. 1 (1976), speaks for itself.

34. DENIED.

35. DENIED.

CAUSE OF ACTION 2, IN THE ALTERNATIVE - FAILURE TO REQUIRE AIPAC'S COMPLIANCE WITH, OR EVEN TO ADDRESS AIPAC'S VIOLATION OF, DISCLOSURE OBLIGATIONS IMPOSED BY 2 U.S.C. § 434(c)

36-38. No answer to paragraphs 36 through 38 is required since this cause of action has already been dismissed.

II. Defendant further DENIES all allegations in the complaint not heretofore admitted or denied, or to which defendant has not otherwise specifically responded, and pleads as an affirmative defense that the allegations fail to state a claim upon which relief can be granted.

Respectfully submitted,

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August 31, 1993

FOR THE DEFENDANT
FEDERAL ELECTION
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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2804
American Israel Public Affairs Committee	)	
	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter was initiated by a complaint filed on January 12, 1989, by James E. Akins, George Ball, Richard Curtiss, Paul Findley, Robert J. Hanks, Rear Admiral Andrew I. Killgore (Ret.), and Orin Parker. On December 19, 1989, the Commission found no reason to believe AIPAC violated 2 U.S.C. § 441a(a)(2)(A) on the affiliation allegation. At the same time, the Commission found reason to believe that the American Israel Public Affairs Committee ("AIPAC") violated 2 U.S.C. § 433, 434 and 441b based on activities conducted in connection with federal elections. Regarding these alleged violations, the Commission initiated an investigation in which it posed numerous interrogatories and requests for documents to the Respondents and to other witnesses as well as collecting and reviewing information filed with the Commission by federal political committees. On October 30, 1990, the Commission found no reason to believe AIPAC violated any provision of the Act on the basis of the amended complaint filed on July 23, 1990.

II. FACTUAL AND LEGAL ANALYSIS

The allegations and investigation in this matter relate to AIPAC's direct and indirect support or assistance to candidates for federal office, particularly through its communications to encourage its own contributors and supporters to financially assist federal candidates. The latter issue also raises the questions whether AIPAC's contributors and supporters are "members" of AIPAC as that term is defined for purposes of the Federal Election Campaign Act of 1971, as amended, ("the Act") and, if not, whether AIPAC meets the requirements set out in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) ("*MCFL*") for exemption to the Act's prohibition on corporate expenditures in connection with a federal election.

As set forth in this brief, the General Counsel concludes that AIPAC's contributors and supporters do not qualify as members of AIPAC for purposes of the Act and that AIPAC does not meet the requirements of *MCFL* for exemption from the Act's prohibition on corporate expenditures. Furthermore, the General Counsel concludes that AIPAC has made, in cooperation, consultation, or coordination with federal candidates, communications to persons urging support, financial or otherwise, for such federal candidates or providing assistance to federal candidates in their campaigns. In the General Counsel's view, there is probable cause to believe these activities violate the Act's prohibition on corporate contributions. Thus, the General Counsel recommends that the Commission find probable cause to believe AIPAC has violated 2 U.S.C. § 441b. Because AIPAC's political activities did not rise to such a level as to make them

a major purpose of the organization, the General Counsel recommends that the Commission find no probable cause to believe that AIPAC has become a political committee through its activities.

A. The Act and Regulations

Pursuant to 2 U.S.C. § 431(4), the term "political committee" refers to any committee, club, association, or other group of persons which receives contributions or makes expenditures aggregating in excess of $1,000 during a calendar year. The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A)(i). Pursuant to the Act, "expenditure" includes any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing a federal election. 2 U.S.C. § 431(9)(A)(i). When an organization qualifies as a political committee pursuant to 2 U.S.C. § 431(4), the organization must register and file periodic reports of its receipts and disbursements with the Commission. 2 U.S.C. §§ 433 and 434.

The Act prohibits any corporation from making contributions or expenditures in connection with a federal election. 2 U.S.C. § 441b. Pursuant to section 441b, the term "contribution or expenditure" includes any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services or anything of value to any candidate, campaign committee, or political party or organization in connection with a federal election. 2 U.S.C. § 441b(b)(2).

In *MCFL*, the Supreme Court stated that "an [independent] expenditure must constitute 'express advocacy' in order to be subject to the prohibition of § 441b." 479 U.S. at 249. The Supreme Court had, however, earlier recognized that expenditures coordinated with candidates or their committees are treated as in-kind contributions. *Buckley v. Valeo*, 424 U.S. 1, 46 n.53 (1976) ("*Buckley*").[1] The Supreme Court has defined "express advocacy" to include "communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.' *Buckley*, 424 U.S. at 44 n.52. The Court later said this requirement sought to "distinguish discussion of issues and candidates from more pointed exhortations to vote for particular persons." *MCFL*, 479 U.S. at 249.

The Act excludes communications by a corporation to its stockholders and executive personnel and their families on any subject from the definition of contribution or expenditure. 2 U.S.C. § 441b(b)(2)(A). Moreover, Commission Regulations permit an incorporated membership organization, incorporated trade

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[1] The United States Court of Appeals for the First Circuit relied on the statements in *MCFL*, requiring express advocacy for an expenditure to be prohibited, in holding invalid a Commission regulation at 11 C.F.R. § 114.4(b)(5)(i) relating to voter guides. *Faucher v. FEC*, 928 F.2d 468 (1st Cir. 1991) ("*Faucher*"). The Commission filed a petition for a writ of certiorari with the Supreme Court seeking review of the *Faucher* decision's finding with respect to 2 U.S.C. § 441b. On October 7, 1991, the Supreme Court denied the petition. Consequently, the Commission decided to acquiesce to the courts' rulings requiring express advocacy for an independent expenditure to be prohibited by Section 441b.

association, incorporated cooperative or corporation without capital stock to communicate with its members and executive or administrative personnel. 11 C.F.R. § 114.3(a)(2).[2]

If a membership organization makes a communication to its members expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the election of a clearly identified candidate), the organization must report the costs directly attributable to such communication to the Commission if such costs exceed $2,000 for any election. 11 C.F.R. §§ 100.8(b)(4) and 104.6.

The Commission has also said that incorporated entities may communicate with their restricted classes and recommend contributions be made to specific federal candidates as long as the corporation does not act as a conduit or intermediary for earmarked contributions or facilitates the making of contributions to federal candidates, such as by providing envelopes addressed to such candidates. See, Advisory Opinions 1982-2 and 1987-29.

The Regulations define "members" as "all persons who are currently satisfying the requirements for membership in a membership organization . . . or

[2] The regulation implies that some degree of coordination, consultation, or cooperation with the candidate is permissible when an organization is making an internal communication to its members, especially regarding candidate appearances. As the regulation makes clear, however, the degree of coordination, consultation, or cooperation implied by the regulation does not permit an organization to copy the candidate's campaign materials and distribute them to its restricted class. *See, e.g., Republican National Committee v. FEC*, 487 F. Supp. 280 (S.D. N.Y. 1980) (three-judge panel).

corporation without capital stock." 11 C.F.R. § 114.1(e). In *FEC v. National Right to Work Committee*, 459 U.S. 197 (1982) ("*NRWC*"), the United States Supreme Court considered whether the National Right to Work Committee, a nonprofit corporation without capital stock, was limited in soliciting funds to its "members." The Court stated that section 441b limits solicitation by nonprofit corporations to "those persons attached in some way to it by its corporate structure." *Id.* at 202. The Court went on to note that members of a nonstock corporation were "to be defined, at least in part, by analogy to stockholders of business corporations and members of labor unions." *Id.* at 204. The Court further stated that the analogy to stockholders and union members "suggests that some relatively enduring and independently significant financial or organizational attachment is required to be a 'member' under [2 U.S.C.] § 441b(b)(4)(C)." *Id.* In determining this issue, the Court noted that it was permissible for the Commission to look to the corporate charter and bylaws. *Id.* at 205. In *NRWC*, the Court determined that "those solicited were insufficiently attached to the corporate structure of NRWC to quality as 'members'" under 2 U.S.C. § 441b(b)(4)(C) because NRWC's Articles of Incorporation disclaimed the existence of members; the solicitation letters made "no reference to members"; members played "no part in the operation or administration of the corporation"; members did not elect corporate officials; there were no membership meetings; and, there was no indication that the asserted members exercised any control over the expenditure of their contributions.

B. AIPAC's Activity Regarding Federal Candidates and PACs

The complaint makes numerous wide-ranging and disjointed allegations that AIPAC has provided support to federal candidates. These allegations focus primarily on AIPAC's policy conference, political workshops, meetings with candidates to discuss their campaigns and their views of Middle East issues, targeting of candidates for support or defeat, and efforts to make its preferences known to its supporters (especially those who are associated with a pro-Israel political action committee or are fundraisers for a candidate). The allegations also focus on AIPAC's alleged efforts to encourage contributions to favored candidates as well as other forms of fundraising assistance or campaign support.

AIPAC contends that once the complaint is stripped of its conclusions of law, the remaining factual assertions that meet the requirement of 11 C.F.R. § 111.4 describe "nothing more than permissible and constitutionally protected internal communications of a non-profit membership organization." AIPAC has also generally attacked many allegations in the complaint as offering "little more than an unfocused recitation of usually unattributed news stories, augmented by a methodologically unsound analysis of selective data.[3]

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[3] AIPAC's responses to many allegations consist of its assertion that the complaint does not meet the requirements of the regulations that statements not based on personal knowledge should be accompanied by identification of the source of the information. See 11 C.F.R. § 111.4(d)(2). We note that the use of the word "should" indicates that this provision urges complainants to include such information but does not require them to do so in order to file a valid complaint. The absence of such information, however, has been considered in assessing the weight or credibility to be given to such information.

1. AIPAC's Organization

AIPAC is an incorporated organization that is tax exempt as a 501(c)(4) lobbying organization. Its staff is organized into a legislative department, a foreign policy issues department, a development department, a finance department, and a political department.

According to AIPAC's response, the Political Department "helps to educate candidates running for public office as well as AIPAC members." The department's professional staff "monitor Senate and House campaigns, seek to familiarize candidates with the views of the Jewish community, and provide them with current information about the U.S.-Israel relationship." According to AIPAC, its Political Department "collects and makes available to AIPAC members information about current or upcoming campaigns for federal and other public offices." This information "may include candidate position papers, voting records and publicly available information such a public polling data, and summaries of financial information disclosed in filings with the Federal Election Commission." This information "is usually distributed to AIPAC members in a summaries report known as 'Campaign (Year): Senate and House Update,' on a monthly and annual basis." AIPAC provided copies of its 1987 and 1988 updates.

2. The Policy Conferences and Political Workshops

AIPAC's main event each year is its Policy Conference in Washington, D.C., where its policy for the next year is set and where there are speeches and other appearances by Members of Congress as well as political seminars and workshops. With regard to the Policy Conference, the complaint states:

> AIPAC also plays a role in coordinating the distribution of funds raised by the respondents and other pro-Israel PACs. For example, at the 1983 Policy Conference AIPAC officials stressed the importance of linking contributions by out of state PACs to local constituents. They informed those in attendance that once the PACs had raised funds AIPAC would "find a local pro-Israeli constituent to make the contribution since this better insures 'access' than out of district money." Exhibit 11 at 4-5. At the same conference, AIPAC members were told that they were "supposed to report all contributions to the organization so that, although AIPAC itself never contributes, its lobbyists can later say to the politician 'we were responsible for you receiving X amount of dollars' in the last campaign." *Id.*

. . . .

> Workshops at the 1984 Policy Conference featured nationally-renowned specialists on campaign polling and media. Emphasis was placed on the importance of increased funding to pro-Israel contenders, particularly Rep. Paul Simon and Gov. James Hunt, who were running against

> Senators Charles Percy and Jesse Helms, respectively. Exhibit 13 at 5. Panelists also noted with concern the apparent re-election difficulties of Senators Rudy Boschwitz (R-MN) and Carl Levin (D-MI). *Id.* A packet of information which covered all of the 1984 races was distributed to the members along with an appeal for them to become active. *Id.* at 6.
>
> At the 1988 Policy Conference, AIPAC actively targeted members of Congress for election or defeat. Using a "key race system" AIPAC endorsed candidates based on three factors: 1) whether he or she was a member of the four key congressional committees (Appropriations, Budget, Foreign Affairs and Armed Services); 2) the member's legislative record on pro-Israeli issues, and 3) the likelihood of success of the member's reelection effort. Exhibit 14 at 6.
>
> AIPAC's list of vulnerable pro-Israel House incumbents for 1988 included the following:
>
> Samuel Gejdenson (D-CT-2)
> Jack Davis (R-IL-4)
> Vin Weber (R-MN-2)
> Mike Espy (D-MS-2)
> James McClure Clark (D-NC-11)
> Wayne Owens (D-UT-2)
> John Miller (P-WA-1)
>
> AIPAC's list of vulnerable anti-Israel House incumbents included the following:
>
> Ron Marlenee (R-MT-2)
> Robert Davis (R-MI-11)

AIPAC's list of vulnerable pro-Israel Senate incumbents included Howard Metzenbaum (D-OH), Frank Lautenberg (D-NJ) and David Durenberger (R-MN). AIPAC listed John Chafee (R-RI) as a vulnerable anti-Israel Senate incumbent. See Exhibit 14 at 7.

The three exhibits attached to the complaint purport to be typed reports from the 1983, 1984, and 1988 AIPAC Policy conferences, though there is no evidence verifying the author or the source of these documents or their authenticity or credibility.

The putative report of the 1983 conference noted that AIPAC officials took partial credit for the defeat of Paul Findley and that AIPAC staffers were "bellicose" about the fate of Senator Charles Percy in 1984, promising the same treatment against him as Findley received. The document noted that there was little attention given to the 1984 presidential race with nearly all of the attention focused on congressional races. It added that in 1982, 300 candidates solicited campaign support from AIPAC. AIPAC staffers stated they were interested in helping candidates who are (1) incumbents on key committees or with influence on other election officials; (2) representatives headed for the Senate; and (3) state officials with congressional ambitions. The document outlined some of the criteria AIPAC used to rate candidates, with a strong emphasis on travel to Israel.

The document also quoted advice reportedly given by Lynn Cutler, then vice chair of the DNC, on gaining influence with political parties. She reportedly noted the need of the Democratic Party for money and urged AIPAC members to contribute and ask for delegate status to the national convention.

Reportedly, a similar message was conveyed by Mitch Daniels of the National Republican Senatorial Committee, though according to the document without as prominent a "for sale" sign. The conference also put emphasis on Senate races over House races and urged Jewish candidates to seek districts with large Jewish populations and urged Jewish contributors to concentrate on districts with low Jewish populations. This exhibit also states that "the only fundraisers held alongside the conference were for Boschwitz, Durbin, Levin, and Cranston."

According to the putative report of the 1984 conference, panelists at a Campaign '84 workshop illustrated the impact of media by citing Senator Helms' $50,000 per week television budget and the National Association of Arab American's radio and billboard campaign against Rep. Clarence D. Long (D-MD). A tape of NAAA's ad was played, eliciting a negative response from the audience. A portion of the document allegedly covering the 1988 conference, includes a discussion of the presidential race by AIPAC executive director Tom Dine. It attributes to David Gillette, political liaison for AIPAC, a comment that Rep. Marlenee is "one of the last Arabists" in Congress. Jill Buckley, a political consultant, reportedly identified Senators Metzenbaum, Lautenberg, and Durenberger as three incumbents AIPAC would help to re-elect, while targeting Senator Chafee for defeat.

In response, AIPAC claims the allegation that AIPAC coordinates the distribution of funds raised by out-of-state Jewish PACs[4] by linking the con-

[4] The reference to "Jewish PACs" is also intended to refer to pro-Israel PACs. The term "Jewish PACs" has been used by

tributions to a local AIPAC constituent is "false." It further challenges the complaint's use of the "supposed" notes of an "unidentified alleged attendee" at a 1983 policy conference as having "questionable authenticity and accuracy" as well as failing to meet the standards of the regulations. AIPAC claims that for the Commission to give any weight to such notes would invite a wholesale abuse of the complaint process.

Moreover, AIPAC claims that the complaint misrepresents what actually appears in the document. It points out that the memorandum "makes no reference to any discussion of Jewish PACs that occurred at the AIPAC Policy Conference, let alone coordination of Jewish PAC contributions." Instead, AIPAC states that the memorandum "refers only to supposed contributions by AIPAC members, and only in the context of AIPAC encouraging its members to be sophisticated when making political contributions." AIPAC said that without identification of who made such a statement, it is not possible to further respond.

AIPAC contends that it "expressly prohibits any candidate from holding fundraising events at any Policy Conference meeting or in any room reserved for Policy Conference functions." It adds that to the best of its knowledge, no candidates have held fundraising events at its Policy Conferences. It notes that it "has never sold tickets for nor publicized such events in its Policy Conference material." AIPAC acknowledges that at the annual Policy Conference it "does control a portion of the meeting space at the host hotel" which "is utilized by AIPAC to conduct

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AIPAC in some of its responses. Where this term has been used in the responses, the term is also used in this brief.

meetings related to the affairs of the convention." It states that "[c]andidates and their representatives are prohibited from holding fundraisers in any of this meeting space." AIPAC adds that no candidate who spoke at the Policy Conference held a fundraiser at it. The General Counsel has examined the reports filed by the principal campaign committees of Senators Boschwitz, Cranston and Levin and Representative Durbin for the periods before and after the 1983 Policy Conference. The receipts and disbursements disclosed in these reports do not indicate any fundraising event around the time of the 1983 Policy Conference. Furthermore, Rep. Durbin's campaign committee has stated that it did not hold any fundraising event in conjunction with the 1983 AIPAC Policy Conference.

In a supplemental response, AIPAC also submitted an affidavit from David Gillette, who had been a political liaison employee in 1988 and is now political outreach director for AIPAC. He states that his position includes "frequent political briefings of AIPAC members." He adds:

> These briefings generally included information about candidates and their positions on issues relevant to AIPAC as well as political analyses of competitive campaigns, such as open seats or seats held by incumbents who had close races in their previous elections. I consistently advised AIPAC members at these meetings that their participation in political campaigns could take a number of forms, such as volunteering in a campaign, registering voters, or contributing to campaigns. At no time, however, did I ever advise AIPAC

members to vote for, endorse or contribute to a specific candidate for federal office.

He states that he gave such a briefing at the 1988 AIPAC Policy Conference "at a political workshop which [he] announced prior to beginning [his] talk was a private briefing limited to AIPAC members." He adds that he did not "announce, distribute, describe or in any way communicate a list, either orally or in writing of candidates supported or opposed or targeted by AIPAC." He notes that he told persons at the briefing that AIPAC does not support or endorse candidates and asserts that he did not urge any one to vote for any candidate or contribute to any candidate. He states that his briefing was followed by presentations by Jill Buckley and Doug Bailey, who he describes as independent political consultants invited to appear to give AIPAC members "an objective political analysis of the 1988 races." He avers that Ms. Buckley never stated that AIPAC had targeted or would help re-elect certain Senate candidates or distributed any list of candidates supported or opposed or targeted by AIPAC.

AIPAC further adds that the 1988 Policy Conference had three political education seminars. The first one examined the internal working of a political campaign from the perspective of a political consultant and a campaign manager. The second one addressed the role of women in politics. The third one presented an overview of "Campaign '88." AIPAC states that prior to the third seminar, "a statement was made that AIPAC neither rates nor endorses candidates." In 1989 Lee Atwater and Governor Bill Clinton addressed the Policy Conference on the importance of political activism at the grassroots

level. Following these speeches, attendees separated into smaller regional groups to hear panelists discuss the need for individuals to participate in the political process. Information sheets listing state party chairpersons, executive directors and their addresses and phone numbers along with a state listing of elected officials were distributed to workshop attendees. Also, a survey was distributed requesting participants to list and describe the relationship, if any, they had with any Members of Congress.

In 1990, Governor Tommy Thompson and Governor Douglas Wilder addressed the Policy Conference on the importance and efficacy of grassroots political activism to the U.S. - Israel relationship. There were three earlier seminars. One dealt with countering anti-Israel propaganda. The second with media coverage in the Middle East. And the third one discussed grassroots politics in detail. Panel participants included Kate Michelman, Grover Norquist, and Steve Gutow, who each presented a case study on citizen participation in politics. At both the 1989 and 1990 Policy Conferences, two briefings on federal campaigns (identical in content and agenda) also took place. AIPAC contends that prior to both briefings, its general counsel stated that "as a matter of policy, AIPAC neither rates nor endorses candidates for office, nor can it, as a matter of law, contribute to federal election campaigns." According to AIPAC, each briefing reviewed the public information (polling data, fundraising figures, challengers and voting records) available for each Senate race, which was followed by a short analysis of competitive House races. Each participant received a booklet of information on the races discussed, known as the Campaign Update or the "black book."

The complaint notes that AIPAC officials have compared AIPAC's operations to those of the AFL-CIO's COPE and has focused on the political workshops AIPAC regularly conducts. The complaint specifically states:

> In addition to making contributions and expenditures in connection with federal elections, AIPAC, like COPE, directs a substantial portion of its resources to programs whose purpose is to involve pro-Israel activists in the political process and in support of specific candidates. This purpose is realized in a variety of ways that constitute a full range of PAC activities. The activities . . . include providing help to start pro-Israel PACs, providing those PACs with assistance concerning organization and operation, encouraging AIPAC members' involvement in support of "acceptable" candidates, and instructing them in candidate support techniques. These activities also provide a means through which AIPAC can maintain contacts with the pro-Israel PACs.

. . . .

> Elizabeth Schrayer, AIPAC's political director, sent letters to various pro-Israel individuals containing fundraising ideas and offering to arrange speakers for a new pro-Israel PAC and to answer questions about starting a PAC. . . . A "how-to" booklet on setting up a pro-Israel PAC, dated February 1985, was available in Schrayer's office, according to a former AIPAC employee.

. . . .

> . . . [I]t is known that at the 1983 Policy Conference, AIPAC ran a series of nuts and bolts political action seminars, many of them moderated by officials of various pro-Israel PACs. Steven J. Rosen, AIPAC's Director of Research and Development, hosted the Political Action panel and discussed the AIPAC Political Leadership Development program, which holds workshops across the country to instruct more than 5,000 affiliated student members in techniques for political action and PAC fundraising.

AIPAC again points out the difficulty of responding to the allegation that an anonymous AIPAC officer compared AIPAC with the AFL-CIO COPE. AIPAC asserts that the Constitution and the Act permit membership organizations, such as AIPAC and AFL-CIO, to freely engage in communications disseminating political information and encouraging members' involvement in political campaigns.

Moreover, AIPAC asserts that the "development of Jewish PACs occurred simultaneously with the growth of PACs in the United States generally." It adds that there has been a debate within AIPAC itself over the desirability and effectiveness of PACs relating to issues involving Israel. It points out that the Jewish community is large and diverse and that knowledge of PACs did not emanate from AIPAC or any single organization. Instead, AIPAC notes that "PACs simply emerged from a debate among sophisticated Jewish activists as to whether to utilize a mechanism for political participation established by Congress and used by many other groups to promote

their views, including Arab-Americans." AIPAC further notes:

> Since its founding in 1954, AIPAC has encouraged its members to participate in all aspects of the political process. Historically, this has included lobbying members of Congress and participating in all aspects of campaigns from stuffing envelopes to making individual financial contributions to a member's candidate of choice.

Furthermore, AIPAC denies that it ever had a policy of practice of establishing, maintaining, controlling, or financing any political action committee.[5] AIPAC specifically notes the allegation that "a pro-Israel political action committee was organized in Virginia in 1983 during a workshop sponsored by AIPAC." It contends that there is "no proof of the event, because it never happened." AIPAC further challenges this allegation for lack of proof other than a passage in Rep. Findley's book.[6]

AIPAC also takes issue with the lack of evidence regarding the allegations that AIPAC has assisted Jewish PACs by sponsoring political education or action seminars at its policy conferences and distributing information to AIPAC members about federal election races. AIPAC provides an affidavit from Thomas Dine that states:

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[5] In support of its position on this issue, AIPAC submitted affidavits from several AIPAC officials, past and present.

[6] The data base shows a pro-Israel PAC called Virginia Congressional Committee in Richmond, Virginia. It first filed its Statement of Organization with the Commission on December 30, 1985.

> As part of AIPAC's grass-roots educational efforts, AIPAC regularly sponsors and organizes political education seminars and workshops to inform its members of the modern lobbying techniques, such as issue development, the legislative process, candidate support practices, voter registration techniques, get-out-the-vote methods and other volunteer political activities such as political action committees, that members may participate in to maximize their impact on the political process. In addition, the seminars and workshops also inform members of their legal requirements in participating in federal elections and sometimes have included information regarding the legal requirements on the formation and operation of political action committees, such as the FEC's own "Campaign Guide on Non-Connected Political Committees." These seminars and workshops are designed exclusively for AIPAC members. Their programs focus on the political involvement of individual members, not PACs. AIPAC does not finance or otherwise pay for a member's attendance at such seminars or workshops.

AIPAC notes that even if the allegations are true, the Act "specifically permits a membership organization to engage in precisely the activities the Complainant's describe."[7]

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[7] AIPAC describes its organizational structure to include an executive committee, officers, a national council, and state chairs. It states that none of these organizational arms of AIPAC has been involved in establishing, maintaining, controlling, or directing any PACs. Furthermore, the Commission has previously determined that there was no reason to believe

In an affidavit, Elizabeth Schrayer states that the "how-to" book referred to in the *Washington Post* article was merely a book entitled, "Guide to Federal Election Law," prepared and utilized by AIPAC for some years before she assumed the leadership of the political department. She states that its use was discontinued in mid-1985 when she became aware of other publicly available material "distributed by the FEC itself containing the same information."

In this matter, the Commission's investigation has not produced credible evidence that appearances at the AIPAC Policy Conferences of incumbent officeholders, who may also have been candidates, involved any express advocacy of their election or the defeat of their opponents or any solicitation on contributions to their campaigns or other activities involving campaign activity. The document presented by the complainants lacks authenticity regarding its author or source or the date of its preparation. Thus, it can be given little weight.

Furthermore, AIPAC has specifically denied that it permits candidates to hold fundraisers alongside its Policy Conferences. No credible evidence has been produced to show that any candidate did hold such a fundraiser. AIPAC has also produced an affidavit from its employee who conducted the more recent political workshops at its Policy Conferences. He avers that he never advised attendees to vote for or contribute to any candidate and denies that Jill

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that AIPAC was affiliated with any of the other pro-Israel PACs originally named in the complaint in this matter. This determination was based on the conclusion that there was no evidence that AIPAC established, maintained, financed, or controlled any of the other PACs as these terms are defined in the Act and Commission regulations.

Buckley ever stated that AIPAC had targeted any candidate or would aid the reelection campaigns of any candidate.

The Commission has long held that incorporated, tax-exempt organizations involved in public policy issues may hold public gatherings related to those issues at which incumbent officeholders, who may also be candidates for reelection, may appear without violating the Act's prohibition on corporate contributions as long as the appearances were held for a major purpose other than the nomination or election of a candidate and did not involve any express advocacy of the election or defeat of any candidate or the solicitation of contributions to any candidate or other factors indicating campaign activity. See, e.g., Advisory Opinion 1980-22.

The General Counsel further concludes that incorporated organizations are not prohibited by the Act from conducting seminars and workshops on how to participate in the political system and comply with federal election laws as long as such seminars and workshops are nonpartisan and are not "designed to urge the public to elect a certain candidate or political party." *See, U.S. v. UAW*, 352 U.S. 580 (1957). For instance, in Advisory Opinion 1986-23, the Commission concluded that a computerized "game" that simulated the term of office and reelection campaign of a freshman Member of Congress could be marketed and sold to congressional offices at a discount because the game's purpose was to educate and inform players and because the content suggested no attempt to influence federal elections.

AIPAC acknowledges that its Policy Conferences have concluded briefings on candidates, their campaigns, and their positions on certain issues, although

it qualifies such admission by contending that it states to participants that AIPAC does not endorse candidates or urge anyone to contribute to a candidate. To the extent that such information is derived, in part, from AIPAC's meetings with candidates, the conveying of such information would be presumed to be done in cooperation, consultation, coordination, or consent with such candidates. If the persons attending this events qualify as "members" of AIPACs under the Act, the obtaining and conveying of such information would be permissible as an internal communication by AIPAC to its restricted class. If, however, the persons attending such events do not qualify as "members" of AIPAC under the Act, then such information is deemed to have been made to the general public and could result in AIPAC's making an in-kind contribution to the respective candidates.

3. Meetings with Candidates

The exhibits to the complaint also contain statements that candidates meet with AIPAC to solicit campaign support from the organization. As previously noted, one exhibit that purports to be a report from the 1983 Policy Conference states that in 1982, 300 candidates solicited campaign support from AIPAC. According to another exhibit—a news article published July 7, 1987, in *The New York Times*, Tom Dine reportedly told the Council of Jewish Federations the previous November that in 1985-86 AIPAC lay leaders and staff met with every Senator up for re-election except one, plus 49 Senate challengers and 205 House challengers, including every new freshman member. He then reportedly named 19 "friends" who would be up for re-election

in 1988. For instance, the November 14, 1988, *Washington Post* article and the June 24, 1987, *Wall Street Journal* article, attached as exhibits to the complaint, state that Governor John Evans[8] of Idaho met with Elizabeth Schrayer and other AIPAC officials early in his campaign for the Senate in his search for large out-of-state contributions. The *Wall Street Journal* article quotes Governor Evans as saying "AIPAC emphasized constantly that they were not a PAC, but they noted that there were Jewish organizations all over the country that had their own PACs and that if we would contact them, they would be able to help us." The article states that AIPAC helped Evans more than a single PAC could in that it "steered" him to a series of "supposedly" independent organizations that gave him $204,950 for his campaign.

More specifically, an exhibit to the complaint contained a page taken from Paul Findley's book, *They Dare to Speak Out*, that included the statement: "AIPAC also helps by providing lists for direct mail fundraising." A third exhibit is a news article that appeared in the November 14, 1988, edition of *The Washington Post* and stated that in 1985 Elizabeth Schrayer, then AIPAC's deputy political director, sent "a sample solicitation letter and list of pro-Israel PACs to a fund-raiser for Evans." The article identifies Morten L. Friedman, a Sacramento attorney, as the Evans fundraiser. It reports that Friedman initially agreed to respond to questions but then declined, saying he was subject to AIPAC's policy. According to the article, Governor Evans said that he

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[8] Governor John Evans was the Democratic candidate for the U.S. Senate in Idaho in 1986.

was not aware AIPAC was trying to raise pro-Israel PAC funds for him through Friedman because he had hired a private fundraiser to do the same thing.

In response, AIPAC acknowledges that "[i]n collecting and analyzing information about federal campaigns, AIPAC routinely meets with candidates for federal office." In a response to supplemental interrogatories, AIPAC more fully described its meetings with candidates:

> AIPAC's political department meets with any individual or his or her representative who is running for election to a federal office and requests a meeting. Typically these meetings last approximately thirty to forty minutes and items of discussion cover four separate areas.
>
> The first topic includes general information about AIPAC. Candidates are informed that AIPAC is a membership organization and not a PAC, that the organization does not rate or endorse candidates and that the organization does not make contributions or expenditures to candidates or solicit contributions on the candidate's behalf. Second, the candidate is informed of AIPAC's primary concerns about the U.S. foreign policy in the Middle East. Candidates are urged to ask questions about substantive policy issues and encouraged to issue a position paper on the Middle East. Third, the candidate is asked to give details of his or her campaign, including the outlook for the candidate's election and the major issues in the campaign. Lastly, candidates are asked whether members of their local community and/or individuals from around the country are providing assistance to the candidate's campaign. Often, the

> candidate or the candidate's representative will discuss with AIPAC whether there are individual AIPAC members in the candidate's community with whom they should speak further about their campaign. At no time during any meeting with a candidate or the candidate's representative is a list of Jewish PACs or list of names distributed.

AIPAC notes that in "addition to helping AIPAC assess a candidate's campaign, meetings between AIPAC and candidates are meant to provide the candidate with information about AIPAC and its positions on foreign policy issues." AIPAC claims that such issue discussions have long been recognized as legitimate activities.

Thomas Dine, executive director of AIPAC, further acknowledges in his affidavit that he and other AIPAC staff members regularly meet with Senators and Congressman regarding issues of concern to AIPAC. He further states:

> . . . Sometimes a Member of Congress' re-election prospects are discussed. At no time have I ever promised or agreed to personally raise money for any Congressman or Senator or his or her campaign, nor to my knowledge did any other member of my staff or representative of AIPAC. When inquiries about financial support for campaigns are made, I routinely inform the individual making the inquiry that AIPAC does not rate or endorse candidates and does not raise any funds for candidates. It is not AIPAC's policy to provide candidates with campaign managers or to provide candidates with lists of AIPAC members for direct mail solicitation purposes unless the lists are purchased for a commercially reasonable price or

exchanged for a list of commercial value equal to the list AIPAC provides.[9]

Morris J. Amitay,[10] who was Dine's predecessor as AIPAC's executive director, states in his affidavit that during his tenure it was "AIPAC's firm policy that AIPAC would not participate in any fundraising for candidates and would not endorse any candidates."

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[9] According to the same *Washington Jewish Week* article, Gary Geller, executive director of Roundtable PAC, is quoted as saying some AIPAC officers "just take it upon themselves to call" and "push contributions for candidates they particularly favor." The complaint describes Thomas Dine, executive director of AIPAC, as "a key contact for candidates seeking donations from Jewish PACs" and refers to an AIPAC newsletter "which regularly reports on how lawmakers and candidates stand on Israel."

AIPAC denies that Tom Dine is or has "ever acknowledged" being a key contact for candidates seeking donations from Jewish PACs. In an affidavit, Dine states that he has never been and is not now a key contact for candidates seeking donations from Jewish PACs. He further stated:

> I have often introduced AIPAC members to elected officials for the purpose of helping to begin friendly relationships, to become involved in political campaigns and to educate officials on issues of concern to AIPAC. At no time, however, have I personally facilitated, or to the best of my knowledge am I aware that any member of my staff facilitated the making of any contribution to a candidate, such as by providing the member with envelopes addressed to a candidate or committee or offering them any other assistance.

He also denied that during his tenure as executive director, AIPAC has ever published a newsletter on how lawmakers and candidates stand on Israel.

[10] Morris Amitay is the treasurer of Washington PAC, a pro-Israel political action committee that he formed after leaving AIPAC.

He adds that when inquiries about financial support for campaigns were made, he would at most suggest that "if the candidate felt comfortable in doing so, he might contact Jewish activists or AIPAC members in their state or District that might be asked to help his campaign." He states that he "made no fundraising calls myself and am not aware of instances where anyone on AIPAC's staff did so."[11]

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[11] The complaint also quotes from another article in the *Washington Jewish Week* that alleged AIPAC officers and staff had aggressively discouraged activists from raising funds on behalf of two pro-Israel challenges. The complaint quotes this material from the article:

> The challengers, Joseph Lieberman of Connecticut, and Hubert H. "Skip" Humphrey III of Minnesota, were running against incumbents widely viewed as friendly to the pro-Israel cause. AIPAC, acting in accordance with its "friendly incumbent" rule, went beyond supporting the incumbents to actively oppose efforts by some Jews to help the pro-Israel challengers, these sources told the *Washington Jewish Week*.

AIPAC claims that even if the allegations in the news article are true, it would have a constitutional right to make such communications to its members. AIPAC then disagrees with the complaint's reference to a statement by Washington attorney Larry Weinberg who offered an opinion to a hypothetical question. AIPAC points out that Weinberg's opinion cannot be viewed as an opinion regarding AIPAC's activities and provides an affidavit from Weinberg to support its position.

AIPAC then refers to another quote from another article in *Washington Jewish Week*:

> [T]he head of another PAC reported that he received a call only recently from an AIPAC officer who, calling explicitly in that capacity, criticized him for contributing to a particular Senate candidate. "We're all

supposed to be with [his opponent]," the officer said, according to this source. "It was an illegal phone call," he said. He declined to speak for the record.

AIPAC notes that the use of an anonymous source in the article makes it impossible for it to investigate the allegation. It claims that the allegation "confuses the alleged actions of an individual who happens to also serve as a volunteer officer of AIPAC with the actions of AIPAC itself." If further asserts that the "anonymous claim that an unidentified AIPAC officer criticized an unidentified PAC official for contributing to an unidentified candidate is hardly proof that AIPAC had a policy to block funds to a candidate for federal office." AIPAC further asserts that the Act and the Constitution do not prohibit AIPAC officials from individually taking it upon themselves to push others to contribute to candidates they favor.

The complaint alleges the AIPAC selects and targets certain candidates for federal elections in order to direct funds to those candidates and elections by AIPAC supporters and the pro-Israel PACs or to block contributions to their opponents. The complaint alleges that this guidance is provided through AIPAC's "black book" and its annual Policy Conferences as well as other contacts with AIPAC. The complaint alleges that AIPAC officials have crossed the line of permissible behavior and contacted the respondent PACs to urge specific contributions to specific candidates. To support its specific contentions, the Complaint draws attention to the similarity in the patterns of contributions by many pro-Israel PACs in races targeted by AIPAC. The complaint states that in 1988 25 pro-Israel PACs contributed to Senator Metzenbaum, Senator Lautenberg, and to challenger Richard Licht while 24 contributed to Senator Durenberger. For 1986, the complaint notes that 25 pro-Israel PACs contributed to challenger Tom Daschle while 21 PACs supported challenger John Evans. For 1984, the complaint points to contributions from 22 pro-Israel PACs for challenger Paul Simon, from 21 PACs for Senator Rudy Boschwitz, and from 20 PACs for Senator Carl Levin.

AIPAC's statement regarding its meetings with candidates demonstrates the depth of its interest in their campaigns and the extent to which AIPAC gathers political intelligence regarding the campaigns of federal candidates and where they stand on issues relevant to AIPAC. AIPAC then uses this information in making a variety of communications to persons it considers its "members."

3. Communications to AIPAC Supporters

(a) The "Black Book"

With regard to the "black book," the complaint states:

> AIPAC's coordination of pro-Israel PACs' donations is greatly facilitated by its distribution of the "black book", a comprehensive, highly confidential guide containing crucial information on every House and Senate race. Exhibit 20. It is

AIPAC asserts through several affidavits of its officers and staff that it does not endorse or support specific federal candidates. In addition, in a supplemental response referring to the *PACs & Lobbies* article, AIPAC takes issue with the article's conclusion that AIPAC must have coordinated certain PAC contributions because of the similar pattern of contributions to candidates, particularly incumbents. AIPAC states: "This conclusion completely ignores the predisposition of all PACs to make contributions to incumbents, and single issue PACs to make contributions to incumbents with committee assignments who most directly effect their single issue concerns." AIPAC further notes "the predisposition of PACs to support challengers who oppose incumbents that are perceived as vulnerable, and for single issue groups to support challengers who oppose incumbents that demonstrate a lack of support for or sensitivity to the single issue group's particular agenda." AIPAC further asserts that the giving pattern of the PACs identified in the article do not support the article's assertion.

sent to only the top 100 or 150 AIPAC members, including many of the leading individuals in the respondent PACs. The "black book" analyzes each political race and rates incumbents on their voting records. "[T]hrough its format, it gives the pro-Israel lobby's biggest givers and most involved activists a clear picture of who is up and who is down in the lobby's view." *Id.* The "black book" also provides details "on how much money each incumbent and challenger has raised and how much he still needs in order to meet his fund-raising goal." Exhibit 21.

Exhibit 20 to the complaint is an article from the *Washington Jewish Week* (the date cannot be determined), which said that AIPAC's "black book" was distributed to only 100 to 150 top members in attendance at the previous month's policy conference. The article states that although the book offers mostly "objective data culled from public sources," it nevertheless provides a good idea of "who is up and who is down" in AIPAC's view. It adds that many who received the book are officers in local and national pro-Israel PACs, who would find the information helpful in deciding who needed financial help in their campaigns. According to the article, the book offers assessments of the incumbents' chances and "gives a thumbnail analysis of the race with frequent tip-offs on the preferred candidate." It includes a voting record checklist on votes considered crucial by AIPAC. It notes that the thumbnail analyses "almost all tilt toward the incumbent if he is viewed as pro-Israel, even if the challenger holds good—perhaps even better—positions on Israel-related issues." The article notes that in Connecticut the pro-Israel

PACs were sticking with incumbent Senator Lowell Weicker, although he was opposed by Joseph Lieberman, a pro-Israel stalwart, who was receiving support from individual Jewish contributors.[12]

AIPAC describes this document, its "Campaign Update," as "no more than the information most membership organizations distribute to members, and often the general public, reflecting the status of the campaigns and the positions of the candidates." AIPAC acknowledges that the document "is distributed to the most politically active AIPAC members" but adds that its distribution "is not based on a member's involvement in a PAC and is not used to direct or control any PAC."

Elizabeth Schrayer, political director for AIPAC,[13] further states in her affidavit that this document is distributed "at two breakfast meetings held once a year, to which approximately 250 of [AIPAC's] most active members are invited." She adds: "The material is entirely an internal communication provided to AIPAC members with information on (1) the electoral prospects of the federal races and; (2) the records of the candidates on U.S. - Israel relations." AIPAC submitted copies of the 1987 and 1988 updates. According to AIPAC, this booklet has been distributed at the Policy Conferences from 1988 to the present.

This update identifies the incumbent and challengers, provides poll results, rates the incumbent's re-election prospects, reviews the candidates' fund-

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[12] This reference to the Connecticut Senate race would appear to place the article in 1988.

[13] Elizabeth Schrayer joined AIPAC in 1983 as an assistant to the political director, became deputy political director in 1985, and political director in 1987.

raising, rates the candidates on their positions on issues of concern to AIPAC, and provides a narrative analysis of the campaign. It is derived in part from the political intelligence AIPAC gathers from its meetings with candidates and makes it clear to AIPAC's most politically active supporters which candidates rate best on the issues relevant to AIPAC and, thus, are deserving of support, financial or otherwise.

(b) Additional Political Department Activities

Moreover, Schrayer states in her affidavit that the central mission of the political department is to educate AIPAC members "about the electoral process and its impact on U.S. - Israel relations." She directs her staff in collecting and making available to members information about current or upcoming campaigns for federal and other public offices. She and other members of her staff meet with candidates to exchange views and "to obtain timely information on the issues and on trends in their campaigns." She acknowledges that she encourages AIPAC members "to build solid relationships with candidates that support strong U.S. - Israel relations." She apprises members "of races in which their involvement would promote a strong understanding by a candidate of the concerns of the American Jewish community."

She has introduced AIPAC members to candidates and provided AIPAC members with the phone numbers and addresses of candidates. Her staff also responds to requests from AIPAC members for candidate position papers.[14] Her job also includes

[14] As noted, AIPAC solicits such position papers from candidates when it meets with them. AIPAC has provided a selection of sample candidate position papers. These sample position papers basically set out the candidate's view with respect to U.S. foreign policy, Israel, and other Middle East issues. AIPAC copies and distributes these candidate position papers to persons it considers it "members" at the request of such persons.

monitoring the extent of Jewish participation in federal campaigns for which she compiled a list of Jewish PACs, a list she describes as similar in character and scope to lists known to be maintained by the four party committees (DSCC, DCCC, NRSC, NRCC). This list has been provided to AIPAC members on "rare occasions".[15] She adds that she has never promised to raise money for any candidate or acted as the agent for any campaign fundraiser and has not personally facilitated the making of any contribution to any candidate. AIPAC maintains that it "has no copies of any sample solicitation letters or lists of pro-Israel PACs in its possession."

Schrayer's affidavit is corroborated by an affidavit by Karen Kaufman, an AIPAC political analyst, who states that her duties included researching

[15] In a sworn response to interrogatories, AIPAC stated that in the early to mid-1980s, various news organizations and political groups began to compile and distribute lists of allegedly pro-Israel PACs. AIPAC acknowledges that in 1986 it did have a list of PACs thought to be pro-Israel that is "informally compiled from these and other sources for its own use in order to monitor one indicator of political activity." AIPAC adds that at first it had no specific policy regarding the distribution of this list "but believes that the list, at most, was distributed to a very limited number of people." AIPAC avers that in 1988 it stopped maintaining such a list to "avoid even the appearance that such a list was indicative of a relationship between AIPAC and pro-Israel PACs." It claims that it no longer maintains such a list.

Senatorial and Congressional campaigns. These duties included meeting with candidates to exchange views and discuss their chances of becoming an elected official. She adds, however, that at no time did she ever promise or agree to raise funds for any campaign or act as the agent of any campaign fundraiser. Her duties also involved her contacting AIPAC members to urge their involvement in federal election campaigns and "to apprise them of certain races in which their involvement, in the campaign, might be useful in encouraging any viable candidates to be supportive of the U.S. - Israel relationship." She adds that it was not her practice "to solicit or suggest that individual AIPAC members make a contribution to any particular candidate." She further states that her duties also included "ascertaining the extent of Jewish participation in federal campaigns," including identifiable Jewish PACs. She notes that she "was given a list of Jewish PACs with names of individuals whom [she] assumed were AIPAC members who were involved in those PACs." She asserts that this list "was not maintained for any purpose other than tracking Jewish support for candidates."

AIPAC's response to more specific allegations notes that the only support the complaint provides for its allegation that AIPAC provides direct mail fundraising lists is the statement in Paul Findley's book. AIPAC states: "The page from Mr. Findley's book offers nothing more. No example. No source. No citation." AIPAC adds that it "does not provide candidates with lists for direct mail fundraising." Instead, it states that mailing "list exchanges are handled through a major commercial list broker located in Wisconsin" and that such exchanges with federal

candidates are arranged by this list broker in a manner consistent with applicable Commission regulations.

With regard to the *Washington Post* article and the Evans campaign, AIPAC states that the article makes no mention of AIPAC offering to provide help for the Evans campaign or a suggestion that the staff person mentioned offered her own services. It asserts that this is an embellishment by the complainants. Instead, AIPAC says that the article simply describes a communication by an AIPAC employee to an AIPAC member. It adds:

> The AIPAC member had met Governor Evans and subsequently volunteered to help his campaign for the Senate. He requested information from a member of AIPAC's staff he believed might help him become a more effective political participant.

AIPAC said it provided him with this information "as part of its ongoing political education program." It acknowledges, as stated in the article, that the communication included "a position paper of a candidate on issues of concern to the member, a sample solicitation letter that the AIPAC member may have found helpful in drafting his own, a list of pro-Israel PACs, and an offer to answer any questions the member may have had about how he could most effectively participate in the political process." AIPAC argues that nothing in the act or regulations prohibits the distribution of such material by an organization to its members.[16]

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[16] AIPAC further states that the conclusions in the article relating to the Evans campaign "is based on nothing more than the author's tendentious belief that overlapping members between AIPAC and certain Jewish PACs and similar patterns

In an affidavit, Morten Friedman (the Evans fundraiser) states that he has been a member of AIPAC since 1977 and an officer since 1986 and has long been active in Jewish affairs and in political affairs, serving as PAC director from 1979 to 1981 for the California Trial Lawyers Association. He states that he met Idaho Governor John Evans at the 1985 AIPAC Policy Conference and talked with him on a number of issues, including the 1986 Senate race and Evans' candidacy. He adds that at that time he "decided to volunteer to assist him in raising funds for his campaign." Shortly after the conference, he informed Elizabeth Schrayer, then AIPAC's deputy political director, that he was assisting Evans and wanted to send some solicitation letters to some Jewish political activists. He said that he asked Schrayer "if she could send [him] a sample solicitation letter that [he] might review." He also requested a list of Jewish PACs to send the letter to and a position paper reflecting Governor Evans' views on Middle East policy. He adds that "[a]s a member of AIPAC, I fully expected that such information could be provided to me." He further states that neither Schrayer nor any other AIPAC official or employee directed or controlled his fundraising efforts or facilitated his solicitation efforts on behalf of Evans. Elizabeth Schrayer states in her affidavit that the providing of Governor Evans' position paper was something routinely done by her or her staff. She also acknowl-

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of contributions are sufficient proof not only are conclusive proof [sic] that the PACs are affiliated, but that 'AIPAC steered' Mr. Evans to them." AIPAC describes this allegation as "untrue." AIPAC also claims this article fails to meet the minimum standards of 11 C.F.R. § 111.4.

edges sending him a list of Jewish PACs that she maintained, but described it as a rare occasion. AIPAC further stated in sworn answers to further interrogatories that the "sample solicitation letter sent to Morton Friedman was the only such letter that Ms. Schrayer or other members of AIPAC's staff specifically recall providing to an AIPAC member."

AIPAC also disputes the allegation that the similarity in the pattern of contributions of selected pro-Israel PACs is evidence of AIPAC's involvement in such activity. AIPAC states:

> Additionally, many candidates also hire fundraisers with special knowledge of the Jewish community. These fundraisers are agents of a candidates' campaign who utilize their numerous contacts and resources to solicit funds from the Jewish community, including Jewish PACs. These individuals and their candidates are tenacious in their efforts to secure contributions for their campaign, often calling Jewish PACs repeatedly until each has given the candidate the maximum amount allowed by law or that they are able. As part of their constant solicitation efforts, a candidate's fundraiser will typically include information about the candidates' campaign, such as the latest polling data, the candidate's position on issues of concern to the Jewish community, the strategies of the campaign and the campaign's financial requirements.
>
> These campaign fundraisers operate independently of AIPAC and AIPAC has no ability to direct or otherwise control their activities. Thus, it should come as no surprise that in certain instances Jewish PACs, all aggressivly [sic]

> solicited by the same candidate and his or her fundraisers, contribute to the same campaign.

AIPAC further contends that compared with other interest groups there is a relatively low level of overlapping contributions from Jewish or pro-Israel PACs to the same candidate.

In this regard, AIPAC submitted affidavits from Barbara Klein, a paid consultant to the 1988 Senate campaign of Pete Wilson, and Kay Weinstock, a paid consultant to the 1988 Senate campaign of Sen. David Durenberger. Both were involved in fundraising for their respective campaigns. In identical language, they state that they made numerous phone calls to Jewish political activists and officials of Jewish PACs to solicit contributions. Where identified Jewish PACs had not contributed to the campaigns and even where they had, they state that they made repeated phone calls to obtain the maximum legal contribution. Both state that they never received directions or requests from AIPAC personnel to solicit specific individuals or PACs on behalf of a federal candidate. They both acknowledge asking AIPAC to provide them with the names of individuals who might be interested in helping their campaigns, either as a volunteer or as a contributor. They add that AIPAC often introduced them to AIPAC members or suggested particular AIPAC members but to their knowledge "never . . . directed any individual to volunteer or contribute to the . . . [c]ampaign or facilitated any such contribution." They denied that AIPAC had ever provided them with a list of Jewish PACs to contribute or a list of AIPAC members to solicit "through a direct-mail campaign." They add that any lists they may have used "that included

AIPAC members were purchased from a direct mail vendor for a commercially reasonable price."[17]

(c) Schrayer memorandum

With regard to specific actions by AIPAC officials and employees to raise funds for candidates, the complaint states:

> For example, a 1986 memorandum from Elizabeth Schrayer, AIPAC's Director of Political Education, was mentioned in a recent CBS *60 Minutes* broadcast and was recently disclosed in the *Washington Post*. In that memorandum, Ms. Schrayer urged a colleague to make certain that several pro-Israel PACs around the country channeled cash contributions to a group of Senatorial candidates. See Exhibit 2. Both Ms. Schrayer and the recipient employee contacted various of the pro-Israel PACs to solicit such contributions. Exhibit 3. The Schrayer memo listed nine pro-Israel PACs and noted that some had not contributed to certain candidates. Records at the Federal Election Commission show that in at least two cases, PACs made additional donations to Schrayer's suggested candidates' after the date of the memorandum. Exhibit 3. This and other internal AIPAC documents show "that the group's top political operative was actively involved with pro-Israel political action committees (PACs) trying to help raise money for several candidates in the 1986 Senate races." *Id.*[18]

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[17] See also the discussion of the Cheryl Kagan affidavit in subsection (d) that follows.

[18] The memorandum was directed to Karen Kaufman.

AIPAC responds that its "policy is to not solicit Jewish PACs for contributions to federal campaigns, or even attempt to exercise any control over their decisions; AIPAC certainly does not have the power or ability to direct the allocation decision of any Jewish PAC." AIPAC further states:

> Ms. Kaufman was a political analyst who was routinely in contact with AIPAC members. Her job was to analyze campaigns, including making rough estimates of the level of Jewish support. The sources for this information included the campaigns themselves, FEC reports (including the FEC reports of Jewish PACs), and conversations with AIPAC's own members. The 1986 memorandum was an unusual instance in which Ms. Kaufman was asked to call a number of AIPAC members to see if they would "try" suggesting to certain Jewish PACs that those PACs make contributions to identified candidates. This was outside the scope of her normal activity. The request to Ms. Kaufman was not made at the suggestion or request of any candidate, but solely as a result of the organization's interest that some candidates supporting strong U.S.-Israel relations merited some support from the Jewish community.
>
> The staff member, in turn, acted under standing instructions to contact only AIPAC members about communications that might be partisan. Her principal source of telephone numbers in making calls was the computerized list of AIPAC members. Her notations on the memorandum refer by name only to AIPAC members.

AIPAC further notes:

> . . . Six of the nine PACs made no contributions to any campaigns despite the calls to AIPAC members about the PACs. Of the three PACs that made any contributions at all after September 30, 1986, not one of them responded in the exact way the memo had hoped. Rather, in the two cases when there was a response in accordance with the memo, the same PAC also responded in direct opposition to the memo.
>
> Another way of stating the same information is that of the 30 suggestions urged in the memo, only three were subsequently made, while in two additional cases contributions were made opposite the memo's preference. Thus, the memo had a positive response rate of 10 percent, a negative response rate of 7 percent and a no response rate of 83 percent.

AIPAC further asserts that this "partisan communication to AIPAC members was clearly permissible." It notes that the "relationship of an AIPAC member to a Jewish PAC does not render it any less so." AIPAC adds that it "was free to urge that its members take any effective action to bring about the recommended contributions, contribute from personal resources, solicit other individuals, or contact PACs with which they were associated." AIPAC further states that the only legal constraint was that it avoid exceeding pure speech, such as by mechanically facilitating the contributions or acting as a conduit for their transmittal. Counsel for AIPAC asserts that these restrictions were observed and that no

communication was made outside the permissible class.

Karen Kaufman acknowledges that she is the "K.K." referred to in the memorandum. Kaufman states that this memorandum "is the only memorandum of its kind [she] recall[s] receiving from Elizabeth Schrayer of any other employee or officer of AIPAC." She adds: "Moreover, it is the only instruction of its kind (i.e., a request oral or written to contact an AIPAC member to suggest a PAC take any specific action) that [she] recall[s] ever receiving from Elizabeth Schrayer . . . ." She adds that she would have understood the memorandum as a request to contact AIPAC members she knew (or through the list she maintained of Jewish PACs and associated AIPAC members) were involved in the nine PACs "to encourage those AIPAC members to encourage the PAC decision makers to consider our suggestion." She states that this instance is the only one she can recall where she made such suggestions "although from time to time members did tell [her] of decisions their PACs had made."

Schrayer, in her affidavit, states that she prepared the memorandum "in response to expressed concern among officers of the organization that some candidates supporting strong U.S.-Israel relations merited some support from the Jewish community, including candidates who had received little or no support from the Jewish community." She adds that it was her intention that "Ms. Kaufman contact AIPAC members associated with or active in certain of the Jewish PACs identified in [her] memorandum." She notes: It was our hope that these individuals would consider proposing to these PACs a contribution for the identified candidates. . . ." She states that all names appearing in the memorandum were names of AIPAC members. She further states that she did not prepare the memorandum with the knowledge or consent of any candidate or at their request or suggestions and did not advise them of this effort. She notes that she did not follow up or take any other action on this memorandum.

Although several candidates were mentioned in the Schrayer memorandum, the two most frequently mentioned were Tom Daschle and Governor John Evans. The pro-Israel PACs were identified in the memorandum as "ICEPAC, CT PAC, YAP, GEORGIA, Congressional Action of Texas, GOLD COAST, Southern Florida Caucus, Five Towns, and Kings PAC."

Commission reports show that after the time of the Schrayer memorandum, the following pro-Israel PACs made contributions to the Daschle campaign:

PAC	Date	Amount
America's Leaders' Fund	10-9-86	$ 4,900.00
Americans for Better Congress	12-06-86	$ 1,000.00
Americans for a Good Government	10-8-86	$ 2,500.00
Badger PAC	10-11-86	$ 2,000.00
BAYPAC	10-6-86	$ 200.00
CAPPAC	10-24-86	$ 1,000.00
Chili PAC	9-30-86	$ 1,000.00
Citizens Concerned	10-6-86	$ 5,000.00
Committee for '18'	10-17-86	$ 1,500.00
Congressional Agenda 80's	10-2-86	$ 150.00
	11-1-86	$ 1,000.00
East Midwood PAC	10-20-86	$ 1,000.00

Five Towns PAC	10-21-86	$ 1,000.00
	10-22-86	$ 1,500.00
Florida Congressional Committee	10-8-86	$ 4,000.00
For Integrity in Government PAC	10-20-86	$ 1,000.00
	12-26-86	$ 250.00
Garden State PAC	10-17-86	$ 2,000.00
Georgia Citizens for Good Gov't	10-8-86	$ 2,000.00
	10-27-86	$ 2,000.00
Heartland PAC	10-30-86	$ 500.00
Kings County PAC	10-26-86	$ 1,500.00
Louisiana for American Security PAC	10-29-86	$ 1,000.00
Massachusetts Congressional Campaign	10-22-86	$ 3,500.00
Multi-Issue PAC	10-15-86	$ 500.00
	10-22-86	$ 500.00
	10-28-86	$ 2,500.00
	12-30-86	$ 500.00
National Action Committee - NACPAC	10-24-86	$ 2,500.00
Pacific PAC	10-21-86	$ 4,000.00
Pennsylvania PAC	10-21-86	$ 250.00
Roundtable PAC	10-22-86	$ 2,000.00
Sacramento Area Good Gov't Assn.	10-17-86	$ 2,000.00
San Diego Community PAC	10-6-86	$ 3,000.00
San Franciscans for Good Government	10-22-86	$ 5,000.00
Seattle PAC	11-1-86	$ 500.00
South Texas Area PAC	10-21-86	$ 1,000.00
Suffolk PAC	10-28-86	$ 50.00
Tennesseans for Better Government	10-29-86	$ 2,400.00

To Protect our Heritage PAC	10-23-86	$ 1,000.00
TX PAC	10-17-86	$ 500.00
Willamette PAC	11-4-86	$ 1,080.00
	Total	**$70,780.00**

After the date of the memorandum, the following pro-Israel PACs made contributions to the South Dakota Democratic Party's federal committee, known as the Democratic Majority Campaign Committee:

PAC	Date	Amount
Desert Caucus	10-17-86	$ 5,000.00
St. Louisians for Better Government	10-30-86	$ 2,500.00
Delaware Valley PAC	10-30-86	$ 2,500.00
Citizens Organized PAC	10-31-86	$ 5,000.00
MOPAC	10-31-86	$ 1,500.00
Mid Manhattan PAC	11-12-86	$ 500.00
	Total	**$17,000.00**

These PACs also gave a total of $48,500 directly to the Daschle campaign with St. Louisians, Citizens Organized, and Mid Manhattan contributing a maximum of $10,000 each.

Commission records indicate that the following pro-Israel PACs made contributions to the Evans campaign after the time of the Schrayer memorandum:

PAC	Date	Amount
American Challenge Today PAC	10-23-86	$ 500.00

Americans for a Better Congress	12-6-86	$ 1,500.00
Americans for Good Government	10-8-86	$ 3,500.00
Badger PAC	10-11-86	$ 2,000.00
Chili PAC	9-30-86	$ 1,000.00
City PAC	10-14-86	$ 500.00
	10-28-86	$ 500.00
Congressional Agenda 80's	10-25-86	$ 1,000.00
	11-1-86	$ 1,000.00
East Midwood PAC	9-30-86	$ 750.00
Five Towns PAC	10-6-86	$ 1,000.00
	10-22-86	$ 500.00
Florida Congressional Committee	10-8-86	$ 4,000.00
For Integrity in Government PAC	10-20-86	$ 1,000.00
Georgia Citizens for Good Gov't	10-8-86	$ 2,000.00
	10-27-86	$ 1,000.00
Heartland PAC	10-30-86	$ 1,000.00
Kings County PAC	10-26-86	$ 1,500.00
Louisiana for American Security PAC	10-29-86	$ 1,000.00
Massachusetts Congressional Campaign	10-22-86	$ 3,500.00
Multi-Issue PAC	10-20-86	$ 500.00
Pacific PAC	10-21-86	$ 5,000.00
Roundtable PAC	10-22-86	$ 1,000.00
Sacramento Area Good Gov't Assn.	10-17-86	$ 3,000.00
San Diego Community PAC	10-6-86	$ 1,000.00
Seattle PAC	11-1-86	$ 500.00
South Texas PAC	10-21-86	$ 1,000.00
St. Louis PAC	10-7-86	$ 500.00

St. Louisians for Better Government	10-9-86	$ 5,000.00
Suffolk PAC	10-28-86	$ 50.00
TX PAC	10-9-86	$ 500.00
	Total	**$46,800.00**

The Young Americans PAC reported making a $4,000.00 contribution to the Evans campaign on September 28, 1986, but it filed an amendment on April 13, 1987, to indicate that the check had been voided.

The following Pro-Israel PACs made contributions to the Idaho Democratic Party:

PAC	Date	Amount
Desert Caucus	10-23-86	$ 5,000.00
National PAC	10-23-86	$ 5,000.00
Citizens Organized PAC	10-27-86	$ 5,000.00
Florida Congressional Committee	10-28-86	$ 4,000.00
National Action Committee PAC	10-31-86	$ 3,000.00
St. Louisians for Better Government	10-31-86	$ 2,500.00
	Total	**$24,500.00**

These contributions help fund coordinated party expenditures on behalf of Governor Evans and a GOTV phone bank. See, MUR 2632. These PACs also gave a total of $54,000.00 directly to the Evans campaign with Desert Caucus and St. Louisians contributing the maximum of $10,000 and Citizens Organized listed as contributing $15,000.

Furthermore, at the time of the memorandum, political committees had not yet filed the October

Quarterly Report covering the period from July 1, 1986, to September 30, 1986. Among the pro-Israel PACs that appear to be mentioned in the memorandum, these contributions were reported as made during this period:

Evans

Georgia Citizens for Good Gov't	8-26-86	$ 1,000.00
Gold Coast PAC	9-29-86	$ 500.00
ICEPAC	7-23-86	$ 500.00
TX PAC	8-14-86	$ 1,000.00
	Total	**$ 3,000.00**

Daschle

Connecticut Good Gov't PAC	7-31-86	$ 1,000.00
Five Towns	9-22-86	$ 400.00
Georgia Citizens for Good Gov't	8-26-86	$ 1,000.00
Gold Coast PAC	9-29-86	$ 1,000.00
ICEPAC	7-23-86	$ 3,000.00
Kings County PAC	7-28-86	$ 2,500.00
TX PAC	8-14-86	$ 1,000.00
Young Americans PAC	9-6-86	$ 4,000.00
	Total	**$13,900.00**

These tables indicate substantial contribution activity by pro-Israel PACs after the time of the memorandum, thus raising the inference that AIPAC's contacts with pro-Israel PACs may have been more extensive than those listed in the Schrayer memorandum. This contribution pattern also tends to corroborate, in part, the memorandum.

(d) Amouyal memorandum

The complaint alleges that on November 3, 1987, an AIPAC employee wrote a memo to her colleagues, Barbara Amouyal (then AIPAC's chief spokeswoman) and Elizabeth Schrayer (AIPAC's chief political operative) urging that AIPAC take explicit action to further the campaigns of candidates supported by AIPAC. The suggested activities included contacting the press and other grass roots activities. The complaint then quotes this portion of the memorandum as it relates to the 1988 Rhode Island Senate race:

> Lt. Governor Richard Licht (D) of Rhode Island is running against incumbent Senator John Chafee (R). Licht, who is Jewish, has a very good chance. Our problem is that the pro-Israel community is not excited and is not forthcoming as they should be. We need to put the word out on this race, emphasizing Chafee's poor record. The focus should be to generate interest for a terrific candidate to replace a poor supporter of our issue
> . . .

The complaint then quotes from an article in the *Washington Jewish Week*, where Amouyal reportedly said that the memo "obviously reflected the view of some high level staffers at AIPAC."

AIPAC describes this document as merely a "memorandum written by a low-level staffer to a junior employee (whom AIPAC eventually dismissed) in preparation for her participation in a Jewish press meeting." AIPAC denies that it was written to further the campaigns of candidates supported by AIPAC. It adds that the "memorandum does nothing more than sequentially mention every 1988 presiden-

tial primary campaign with suggestions on efforts that might be made through press stories to elucidate the foreign policy views of each candidate." It acknowledges that there is a reference to the Senate contest between Richard Licht and John Chafee at the end of the memorandum but refers to this reference as "nothing more than an internal office memo between staff regarding thoughts on the race."

AIPAC submitted an affidavit from Cheryl Kagan, who in the 1987-88 election cycle was a paid staff person in the Licht campaign with responsibility for raising funds, including from the Jewish community and Jewish PACs.[19] She states that in her fundraising capacity she made "numerous phone calls" as well as repeat calls to Jewish activists and officials of Jewish PACs to solicit the legal maximum contribution. She adds that she "never received . . . directions or requests from AIPAC personnel to make solicitations of individuals or Jewish PACs on behalf of a candidate for federal office." She acknowledges, however, that she "often asked AIPAC to provide me with names of individuals who might be interested in helping the Licht campaign, either as a volunteer, or as a contributor." She states that "AIPAC often introduced me to or suggested particular AIPAC members, but never to my knowledge directed any individual to volunteer or contribute to the Licht campaign or facilitated any such contribution." She notes that she often contacted individuals from her own solicitation lists compiled through her own research and "contacts developed through years of involvement and work with Jewish political activists and the Jewish

[19] Her affidavit contains language identical to that in the affidavits of Klein and Weinstock, reviewed earlier.

community in general." She concludes that "AIPAC has never provided me with a list of Jewish PACs to solicit contributions for any candidate for federal office, nor has AIPAC ever provided me with a list of AIPAC members from whom I sought to solicit contributions for a candidate for federal office through a direct-mail campaign."

According to the March 1, 1989, issue of *PACs & Lobbies*, the Licht campaign received $229,802 from Pro-Israel PACs.[20] With regard to the pro-Israel PACs that were originally respondents in this matter, the Licht campaign received a total of $178,500. The following contributions were made to the Licht campaign after the memorandum to Barbara Amouyal was written on November 3, 1987, through the end of 1987:

PAC	Date	Amount
Americans for Good Government	11-10-87	$ 3,000.00
Hudson Valley PAC	11-12-87	$ 5,000.00
BAYPAC	11-14-87	$ 500.00
Chicagoans for a Better Congress	11-16-87	$ 500.00
Northern New Jersey PAC	11-19-87	$ 1,000.00
Citizens Organized PAC	11-19-87	$10,000.00
Desert Caucus	11-22-87	$10,000.00
Garden State PAC	11-30-87	$ 2,000.00
Roundtable PAC	12-1-87	$ 1,000.00
East Midwood PAC	12-2-87	$ 1,000.00
National PAC	12-2-87	$10,000.00

[20] The General Counsel's review of the FEC database indicates that pro-Israel PACs contributed a total of $228,402 to Licht in the 1988 electoral cycle.

Chicagoans for a Better Congress	12-4-87	$ 3,000.00
Citizens Concerned	12-4-87	$ 3,000.00
Joint Action Committee	12-10-87	$ 2,500.00
Multi-Issue PAC	12-15-87	$ 1,000.00
Florida Congressional Committee	12-16-87	$ 5,000.00
St. Louis PAC	12-20-87	$ 5,000.00
Five Towns PAC	12-21-87	$ 1,000.00
San Franciscans for Good Government	12-21-87	$ 5,000.00
Delaware Valley PAC	12-22-87	$ 2,500.00
Mid Manhattan PAC	12-22-87	$ 2,500.00
St. Louisians for Better Government	12-22-87	$ 5,000.00
Texas PAC	12-28-87	$ 1,000.00
Americans for Good Government	12-29-87	$ 2,000.00
National Action Committee	12-29-87	$10,000.00
Hudson Valley PAC	12-31-87	$ 5,000.00
	Total	**$97,500.00**

Thus, in the two months after the memorandum was written, the Licht campaign received at least $97,500.00 from pro-Israel PACs. Some PACs made more than one contribution during this period, indicating repeated solicitations. Although this pattern is consistent with the statements of Cheryl Kagan in her affidavit, it also raises the inference that AIPAC employees may have also contacted persons associated with some or all of these PACs to suggest support for the Licht campaign, as suggested in the Amouyal memorandum.

(e) 1990 Louisville House Democratic Primary Election

In May 1990, a news article appeared in the *Louisville Courier-Journal* stating that Jeff Hutter's Democratic primary campaign against incumbent Rep. Romano Mazzoli was being aided by contributions from pro-Israel groups and others outside of Kentucky. The article quotes campaign manager Thor Hesla as saying the campaign got "tremendous support" from AIPAC, particularly in putting a candidate in contact with a "network" of donors. The article adds that according to Hesla AIPAC political liaison Mark Moskowitz helped make follow-up phone calls to pro-Israel groups after they were sent information about Hutter. The article also quotes two Hutter operatives, Robert Bassin (who was his Washington fundraiser) and Louisville attorney Jonathan Goldberg, as denying AIPAC had any significant involvement in the fundraising. They said AIPAC merely provided information on Rep. Mazzoli's record and suggested to potential donors that they contact Moskowitz to confirm Rep. Mazzoli's record. The article quotes AIPAC spokeswoman Toby Derushowitz as saying that some AIPAC members may be helping Hutter, but that the organization itself is not.

According to the FEC database, Jeffrey Hutter raised and spent approximately $287,163 in his primary election campaign challenge to Rep. Romano Mazzoli, ending the campaign with no cash on hand and no debts owed by his principal campaign committee. Hutter raised $112,700 from political action committees, of which $13,500 came from the following pro-Israel PACs:

PAC	Date	Amount
Washington Political Action Committee	4-4-90	$ 500.00
Florida Congressional Committee	4-21-90	$ 2,000.00
Maryland Association for Concerned Citizens	4-26-90	$ 1,000.00
Citizens Organized Political Action Committee	5-7-90	$ 2,000.00
Desert Caucus	5-10-90	$ 1,500.00
Americans for Good Government, Inc.	5-11-90	$ 1,000.00
Garden State Political Action Committee	5-14-90	$ 1,000.00
Joint Action Committee for Political Affairs	5-16-90	$ 1,000.00
Roundtable Political Action Committee	5-18-90	$ 500.00
Hudson Valley Political Action Committee	5-23-90	$ 2,000.00
National Action Committee	5-23-90	$ 1,000.00
	Total	**$13,500.00**

Both Thor Hesla and the candidate Jeffrey Hutter provided statements relating to the news articles and their contacts with AIPAC. Both point out that Thor Hesla was the campaign manager but was not directly involved in fundraising. Hutter states that there was a separate structure for fundraising that was well in place before Hesla joined the campaign. Hesla notes that fundraising at the local level was through a finance committee and that a professional fundraising firm in Washington, D.C., Robert H. Bassin and Associates, was retained for raising contributions at the national level. He adds that the only material the campaign received from AIPAC was limited to issues relating to Middle East affairs such as AIPAC's briefing book.

Hesla recalls that Mark Moskowitz of AIPAC called him and Hutter on at least one occasion each to ask about the campaign generally. He notes that because Hutter often discussed Middle East affairs at campaign appearances, Hutter may have called AIPAC on occasion for clarification of specific issues. Hesla said that he was not aware of any list of names given to the Hutter campaign by AIPAC and that anyone who made a contribution from outside the Louisville area "did so at the request of Mr. Bassin, or a representative of the Hutter campaign in Louisville." He added that he is not aware of any calls made by AIPAC on Hutter's behalf or any follow up calls by AIPAC to pro-Israel groups after they were sent campaign materials about Hutter.

Hutter acknowledges that he met on two occasions with Mark Moskowitz at AIPAC's offices in Washington, D.C., through arrangement of Robert H. Bassin. He notes that he was encouraged to contact AIPAC to become better informed on issues relating to Israel by people in the Louisville Jewish community. He recalls that the first meeting occurred on April 5 or 6, 1990, and the second one on April 30 or May 1, 1990. Hutter adds that the topics discussed at these meetings related to Israel and the United States support for Israel, with particular concern by AIPAC on the need for loan guarantees for housing for Soviet Jews.

Hutter states that "AIPAC did not provide me with information about my opponent, and I did not ask for any such information." He does acknowledge that

Moskowitz "asked how my campaign was going, but did not ask for specific detail, and did not offer any advice." He states that the two meetings with AIPAC "did not generate sources of contributions." Hutter said the only material he received from AIPAC was its briefing book "about Middle East issues."[21] He said he called Moskowitz a couple of times about questions that had arisen "from campaign appearances before jewish groups."

AIPAC states that neither Moskowitz nor AIPAC provided any financial support to the Hutter campaign, made any contributions to or expenditures for the Hutter campaign, or made any solicitations of AIPAC members of others on behalf of the Hutter campaign. It places the dates of the two meetings between AIPAC and Hutter as March 8, 1990, and May 1, 1990. It states that Hutter, Moskowitz, and Laurie Westley attended the March 8 meeting, while Hutter, Moskowitz, Elizabeth Schrayer, Brian Lunde, George Burger, and Robert Bassin attended the May 1 meeting. AIPAC also acknowledges that Moskowitz spoke with Thor Hesla on May 24 and May 25, 1990.

In an affidavit, Mark Moskowitz states that the March 8 meeting "was typical of the meeting I and other members of the political department have with candidates for federal office" and lasted approximately 40 minutes. Moskowitz adds:

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[21] AIPAC provided the General Counsel with a copy of its candidate's briefing book, a loose-leaf binder. Its contents relate solely to issues relating to the Middle East and Israel. No campaign related material was contained in the copy of the book received by the General Counsel.

> We first discussed general information about AIPAC, including that AIPAC is a membership organization but does not rate or endorse candidates; that AIPAC does not make contributions or expenditures to the candidate or solicit contributions on the candidate's behalf; and that AIPAC is not a PAC. We then discussed AIPAC's primary concerns about U.S. foreign policy in the Middle East, such as foreign aid, arms sales and international terrorism and asked Mr. Hutter for his views of these issues. Thereafter, we asked Mr. Hutter to explain his strategy for election to the House of Representatives as well as his view on his chances for success. In the course of this discussion, Mr. Hutter informed us of certain members of the pro-Israel community he had recruited to his campaign.

With regard to the May 1 meeting, Moskowitz states:

> The purpose of this second meeting was to bring AIPAC's political department up to date on the status of Mr. Hutter's campaign. Mr. Hutter updated us on the progress of his race and explained his financial requirements for the remaining weeks of the campaign. Mr. Hutter asked if there were any AIPAC members or other people his campaign staff could contact. Mr. Hutter was reminded that AIPAC does not rate or endorse candidates or raise or solicit funds on a candidate's behalf. Since Mr. Hutter had already identified several AIPAC members who were committed to his campaign, it was suggested that he continue to urge those persons to further assist him in his efforts.

He further avers that he has reviewed the article that appeared in the *Louisville Courier-Journal* and adds that "[a]t no time did I make follow-up calls to pro-Israel groups after they were sent information about Hutter or any other candidate." He adds that he spoke with Thor Hesla on the telephone on May 24 to seek "updated information about the status of the Hutter campaign" and again on May 25 when Hesla called to inform Moskowitz that Hesla had talked to a reporter for the *Courier-Journal* and had given the reporter Moskowitz's name.

AIPAC also submitted an affidavit from Robert Bassin, president of Robert H. Bassin and Associates, Inc., an independent fundraising and political consulting firm. Bassin states that he was a paid fundraising consultant to the Hutter campaign in 1990 with responsibilities for raising funds from individuals and PACs including those "for whom the interests of the American Jewish community were of particular importance." In that capacity, Bassin adds that he "made numerous and repeated phone calls to the president, treasurer and other members of numerous Jewish PACs to solicit contributions on behalf of Mr. Hutter." He states:

> When I solicited contributions on behalf of Mr. Hutter either from individuals or Jewish PACs, I made a concerted effort to explain the reasons why Mr. Hutter was deserving of Jewish support. I explained the latest polling data on the race, the vulnerabilities of Mr. Mazzoli, the candidate's and Mr. Mazzoli's position on issues of concern to the Jewish community, the strategies of the campaign and the campaign's monetary requirements. I often mailed information packets along with any

> requests for contributions to the Hutter campaign. I also asked, on occasion, that Mr. Hutter call key individuals or PAC personnel for support.
>
> I never received, nor have I ever received instructions, directions, assistance or requests from AIPAC personnel to make solicitations of individuals or Jewish PACs on behalf of a candidate for federal office.

Bassin adds that he worked from his own solicitation lists complied through his firm's own research and contacts developed over the years in working with Jewish political activists and the Jewish community in general. He states that "AIPAC has never provided me with a list of Jewish PACs to solicit contributions for any candidate for federal office, nor has AIPAC ever provided me with a list of AIPAC members." He further notes with regard to the May 1 meeting, which he says he arranged:

> Mr. Hutter and I explained the general progress of the Hutter campaign, including Mr. Hutter's projected financial requirements for the remaining weeks of the campaign. Mr. Hutter inquired as to whether there were additional AIPAC members or other people his campaign staff could call to raise additional campaign funds. Mr. Moskowitz and Ms. Schrayer informed Mr. Hutter that neither they, nor other employees of AIPAC could raise or solicit funds on Mr. Hutter's behalf. Both explained that generally House candidates have a tougher job in raising money from the Jewish community and suggested that Mr. Hutter remotivate those already enthusiastic about and committed to his campaign. At no time

> did Mr. Moskowitz, Ms. Schrayer or other AIPAC employees offer to make phone calls on Mr. Hutter's behalf or to make follow up calls to Jewish groups after they were sent information about Hutter. I am also not aware that any such calls were made by employees of AIPAC.

AIPAC adds that the only documents given to the Hutter campaign were the Candidate Briefing Book, the most recent issue of *Near East Report*, and the most recent issue memorandum or action alert.

Bassin's statement regarding his efforts to solicit contributions to Hutter from Jewish PACs is consistent with the affidavits submitted by AIPAC from three campaign fundraisers regarding the extent, or lack thereof, of AIPAC's participation in such efforts. The statements from Hutter, Hesla, Bassin, and Moskowitz do illustrate the degree of interest AIPAC's Political Department has taken in federal elections involving incumbents AIPAC perceives as unsupportive of its positions and the campaign or election strategy of challengers to such incumbents. These statements also illustrate the extent to which AIPAC undertakes efforts to obtain such information and keep updated on it. This depth of involvement would necessarily mean that any communications by AIPAC derived, in part, from such political intelligence obtained from candidates and their campaigns would be deemed to be taken in cooperation, consultation, coordination, or consent of such federal candidates.

(f) 1986 California Senate Election

The complaint alleges:

> In 1986, AIPAC staff members traveled to California and met with Breck McKinley, a Libertarian Party candidate for the Senate in California. Exhibit 5 at 1. These AIPAC staffers offered to get him a campaign manager and to finance a direct-mail campaign for him. *Id.* According to Mr. McKinley, the stated purpose of the AIPAC employees was to siphon votes away from Republican Senate candidate Ed Zschau. *Id.*

The referenced exhibit to the complaint is a June 24, 1987, *Wall Street Journal* news article. This article states that in September 1986, three AIPAC staff members, identified as regional directly Murray Wood, lobbyist Dan Cohen and intern Michael Tuchin, met at AIPAC's Los Angeles office with Breck McKinley, the Libertarian Party candidate for the U.S. Senate in the 1986 general election.

The article further states that according to McKinley, Cohen offered to get him a campaign manager and to finance a direct mail campaign for him in heavily Republican Orange County. It adds that according to McKinley, Cohen said his purpose was to "get" Zschau by siphoning votes away from him. McKinley apparently considered but rejected the offer. The article states that an AIPAC spokeswoman confirmed that a meeting took place but described it as a routine meeting that AIPAC staff members have with many candidates and asserted that no offer of campaign aid was ever made. The November 14, 1988, *Washington Post* article reported a denial from Murray Wood, AIPAC's regional direc-

tor, that any assistance was ever offered. According to the article, Wood stated in a letter to the *Los Angeles Times* that "[w]e clearly did not offer, do not offer, and cannot offer financial or other assistance . . . not directly, not indirectly, not formal, not implied."[22]

AIPAC acknowledges that "[t]wo AIPAC staff members did meet with Breck McKinley in 1986."[23] It adds that when McKinley later claimed AIPAC staff members had offered to provide him assistance with a direct mail campaign or to find him a campaign manager, both staff members "promptly and publicly" denied it in letters to the news media reporting McKinley's statement. AIPAC further claims that "even if the allegations were true, it constitutes no violation." AIPAC asserts that the "Act does not prohibit such an offer of aid and since AIPAC's policy and practice would have precluded its implementation, it could not have led to a violation."

AIPAC submitted affidavits from Murray Wood and Dan Cohen regarding the meeting with Breck McKinley. Wood, regional director for AIPAC in Los Angeles, states that he "sometimes" meets with candidates to exchange views on issues of concern to AIPAC and "to discuss their own assessment of their chances of becoming an elected official." He acknowledges that he met with McKinley "to discuss his views on a number of foreign and national security policy issues, as well as his impressions of the race and his own campaign strategy." He denies, however, that either he or Cohen offered "McKinley assistance of any kind." He states that they "did not offer to get him or provide him with a campaign manger and . . . did not offer to finance a direct mail campaign for him." Cohen, an AIPAC lobbyist in the Washington office, executed an affidavit that contains language identical to Wood's.

Breck McKinley, however, continues to dispute these claims by Wood and Cohen. He states that he did meet with AIPAC representatives Wood, Cohen, an Tuchin in the summer of 1986 at AIPAC's offices on La Cienega Boulevard in Beverly Hills. He adds that he had not met these persons before and has not met with them since that meeting in 1986. McKinley states that he was called by some unidentified person who said they were calling on behalf of Dan Cohen and that he had come to town from Washington, D.C. to interview various candidates and would like to meet with McKinley. He said that the meeting included some brief small talk and a brief statement by him about the Libertarian position in general and his own position of not favoring aid to Israel or any other foreign nation. McKinley states that "AIPAC did offer me assistance in my 1986 Senatorial campaign." He adds:

> The proposed plan was to support me as part of a "spoiler" campaign to draw enough votes from Tschau [sic] to get Cranston elected. "Better Cranston for six more years than Tschau for twenty", was the point of view presented. I was

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[22] This article, however, does not identify the third-party candidate who allegedly was offered such assistance.

[23] AIPAC has also stated in sworn answers to supplemental interrogatories that its employees did not meet with Senator Alan Cranston, Edward Vallen, or Paul Kangas in connection with the 1986 California Senate election. It also stated that its employees did not meet with Michael Goland or persons associated with the National Pro-Life PAC in connection with this Senate election.

> told that, since I did not have one, they would provide me with a campaign manager. I was told that they would pay for a mail campaign into Orange County on my behalf just before the election. Since the meeting was in AIPAC's offices and Murray Wood had been introduced as the Regional Director of that organization, I assumed that when I was told that "we" will do this it meant AIPAC. The meeting was conducted by Dan Cohen.

McKinley further states that to the best of his knowledge "no money was raised or spent by AIPAC on behalf of my 1986 Senatorial campaign."

The General Counsel disagrees with AIPAC's position that even if it had made such an offer, no violation occurred because no such assistance was in fact provided to McKinley. In the General Counsel's view, when an incorporated entity dispatches its personnel to meet with a candidate for federal office, discusses the campaign, and offers such candidate campaign assistance, such as providing the candidate with a campaign manager, a violation of the prohibition on corporate contributions occurs, even if the candidate should refuse the offer. The General Counsel concludes that Congress intended 2 U.S.C. § 441b to prohibit such activity. The General Counsel recognizes, however, that in this particular matter the evidence regarding whether AIPAC offered campaign assistance to McKinley is inconclusive. These circumstances nevertheless illustrate AIPAC's efforts to collect political intelligence regarding federal candidates.

(g) Campaign Workers

The Complaint alleges that in 1982 AIPAC "provided funds and campaign workers" to help defeat Rep. Paul Findley of Illinois, a Congressman widely perceived to be friendly to the Arab cause.[24] Among the exhibits to the complaint is a document that purports to be a report of the June 12-14, 1983, AIPAC Policy Conference at the Washington Hilton. This document contains the statement that "AIPAC officials took at least partial credit for the record high aid amounts to Israel and the electoral defeats of Adlai Stevenson and Paul Findley." It later states:

> Staffers were bellicose about Percy's fate, promising the same treatment against him as Findley received. In addition to funds and campaign workers, AIPAC provided Durbin with 200 student volunteers bussed into Findley's district 2 weeks before the election. Durbin's winning margin was only 1400 votes; if each of the students had swayed 7 voters that action alone defeated Findley.

Another exhibit to the complaint is an article in the November 17, 1998, *Washington Jewish Week*, that states:

> One Republican Jewish activist took note of the 1982 campaign against pro-PLO Rep. Paul Findley (R-Ill.), a contest in which pro-Israel PACs massively backed Findley's challenger, Richard Durbin, who beat him. Even AIPAC officials have privately acknowledged the lobby's heavy active involvement in that race.

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[24] Paul Findley is one of the complainants in this matter.

A third exhibit is a document that purports to be a report of the 1984 AIPAC Policy Conference. It notes that Steven J. Rosen, then AIPAC's director of research and development, hosted a political action panel where he praised AIPAC's political leadership development program of workshops across the country to instruct more than 5,000 student "members" in techniques for political action and PAC fundraising.

AIPAC claims that the anonymous memorandum attached to the complaint "does not depict any violation of the Act." It asserts that even if it had encouraged its "members to volunteer or contribute" to Durbin, "it would clearly be a protected activity of a membership organization." AIPAC cites to exemptions in the Act for communications by a membership organization to its restricted class. AIPAC also cites to Advisory Opinion 1987-29, which the Commission further addressed the right of a membership organization to communicate with its restricted class and urge that it make contributions to recommended candidates.

The campaign committee for Rep. Richard Durbin states that students and volunteers did perform campaign tasks prior to the 1982 election. It specifically states that on election day students from the campus of the University of Illinois in Urbana traveled to Decatur and Springfield to perform campaign tasks. It estimated there were 30 students in Decatur and 50 in Springfield. The committee also provided copies of 18 checks it issued to drivers of cars who brought several other students. The check reimbursements were for mileage and meals. It states that to the best of its knowledge all expenses incurred by the students were reimbursed by the committee. It states

that it has no knowledge of any role played by AIPAC in relation to the volunteer effort.[25]

As noted, the complainants have presented only a bare allegation contained in a document that lacks authenticity regarding its author, its source, or the data of its preparation. AIPAC has denied providing any such assistance. The Durbin campaign has also denied knowledge of any AIPAC involvement. The evidence shows that the Durbin campaign made the payments for out-of-pocket expenses. The events themselves occurred in 1982. Thus, there is a lack of credible evidence regarding AIPAC's alleged involvement in providing campaign workers to the Durbin campaign with respect to the 1982 general election.

(h) Asher solicitations

The complaint also alleges that in "1985, the then-Chairman of AIPAC's Board, Robert Asher, sent letters to major Jewish political donors urging them to send $1,000 to the reelection campaign of Senator Mark Andrews (R-N.D.)." It further alleges that "[f]our years before that, Mr. Asher 'steered some money to the opponent of North Dakota Democratic

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[25] The Commission's database indicates that up to 30 pro-Israel PACs may have contributed approximately $100,000 to Rep. Durbin's 1982 campaign. Because of the general and generic names of many pro-Israel PACs as well as other PACs, a precise number of pro-Israel PACs that contributed to the 1982 Durbin campaign could not be ascertained. Nevertheless, the database shows at least 30 unconnected PACs with general names, similar to those used by pro-Israel PACs, as well as several identifiable pro-Israel PACs, contributed $105,325 to Rep. Durbin's 1982 campaign.

Congressman Byron Dorgan.'" These statements came from an article in *The New Republic*, which stated:

> For example, Robert Asher, the chair of AIPAC's board, leans Republican. He is particularly close to Republican senator Mark Andrews of North Dakota, who faces a tightening reelection race this year. Andrew's Democratic opponent, Kent Conrad, also pro-Israel, is unlikely to get much Israel-PAC money. In a 1986 letter to major Jewish donors, Asher urged Jews to send $1,000 to Andrews-for-Senate. He added, "I look forward to greeting you personally at the AIPAC Policy Conference." Four years ago, as a favor to Andrews, Asher steered some money to the opponent of North Dakota Democratic congressman Byron Dorgan, whose record on Israel is excellent.

AIPAC states that the article makes no claim that the letters were sent by Mr. Asher in his capacity as an officer of AIPAC or offer any proof that they involved any expenditure by AIPAC. AIPAC notes that Asher's affidavit states the letter was sent entirely as a volunteer to the Andrews campaign. AIPAC further notes that Asher is a volunteer to AIPAC and has received no compensation from and maintains no office at AIPAC and that he resides in Chicago, where there is no AIPAC office. AIPAC adds that Asher "commonly adds handwritten notes to his letters referring to some mutual interest or mentioning some forthcoming event." AIPAC claims the text of the solicitation letter made no reference to AIPAC and was made entirely on behalf of Senator Andrews. AIPAC also states that the allegation

Asher steered money to the opponent of Rep. Dorgan is "simply false." AIPAC notes that Asher himself made a contribution to the Republican nominee in that race but neither solicited nor received a single contribution for Rep. Dorgan's opponent and did not "steer" any money to him.

AIPAC also submitted an affidavit from Robert Asher in which he states:

> . . . I have sent letters to major Jewish political donors to urge them to support certain candidates for federal office. I did send solicitation letters on behalf of Senator Mark Andrews. Such letters were sent on my own stationery, mailed at my own expense and done only in my individual capacity as a supporter of the candidate. . . . The solicitation letter itself made no reference to AIPAC and was made entirely on behalf of the Andrews campaign. AIPAC had absolutely no involvement in the funding of this solicitation effort, or any other solicitation efforts I may have made, nor did AIPAC, or any officer of AIPAC direct, order or otherwise control my solicitation efforts, in these, or any other instances.

Asher further avers that while he gave a donation to the opponent of Representative Dorgan, he "never solicited any other individual for funds to his opponent, nor did I ever steer any contribution to his opponent."

The General Counsel concludes that the evidence indicates that Asher's solicitations were made by him personally and are not attributable to AIPAC.

5. Conclusion

As noted in the above discussion, the General Counsel concludes that several specific allegations lack sufficient credible evidence or have been rebutted. What remains, however, is evidence—chiefly from affidavits and statements submitted by AIPAC itself—that AIPAC has coordinated and consulted with candidates in undertaking efforts on behalf of the campaigns of these candidates. In some cases, such efforts have involved the express advocacy of the election or defeat of candidates.

AIPAC readily admits that it meets frequently with candidates for federal office and as part of such meetings it asks the candidates about the details of their campaigns including the outlook for their election and the major issues in the campaign, and how much assistance the campaign is receiving locally and nationally. AIPAC also acknowledges that it discusses with such candidates whether there are individuals that AIPAC considers its members in the candidate's community with whom they should speak. Once AIPAC holds such a meeting with a candidate and discusses the candidate's campaign in this fashion, any action AIPAC later undertakes on behalf of that candidate's campaign could not be considered independent but would instead be viewed as activity undertaken in cooperation, coordination, or consultation with the candidate or the campaign.

AIPAC Political Director has acknowledged in an affidavit that she has introduced AIPAC "members" to candidates and provided AIPAC "members" with candidate phone numbers and addresses. Fundraisers for federal candidates state that they have asked AIPAC to give them the names of persons who might

be interested in helping their campaigns and that AIPAC has introduced them to AIPAC "members" or suggested particular "members" to contact who might be interested in aiding the campaign. In an affidavit, one AIPAC employee admits that she does contact AIPAC "members" to urge their involvement in federal election campaigns and "to apprise them of certain races in which their involvement, in the campaign, might be useful in encouraging any viable candidates to be supportive of the U.S. Israel relationship," although she claims it was not her practice to solicit or suggest a contribution to a particular candidate.

AIPAC also solicits and collects candidate position papers on Middle East issues and copies and distributes them to its "members." AIPAC further acknowledges providing a "member," who represented himself to AIPAC as also a candidate fundraiser, with a sample solicitation letter, a candidate's position papers, and a list of Jewish PACs. Although AIPAC claims this was the only such letter its staff specifically recalls, it did describe the sending of the letter as part of its on-going political education program. AIPAC also notes that it permits candidates to rent its mailing list from a commercial list broker at the usual commercial rate. AIPAC also prepares and distributes to its most politically active "members" a "campaign update" that discusses the voting record and positions of incumbent members of Congress and rates their reelection prospects in a manner that makes it clear who should be supported and who should be opposed.

AIPAC has in the past maintained a list of Jewish PACs and tracked their support for federal candidates. AIPAC acknowledges that an employee, Karen

Kaufman, contacted AIPAC "members" associated with several Jewish PACs to solicit financial support for certain candidates' campaigns. It seeks to minimize this activity by calling it an "unusual instance" and "outside the scope of her normal activity" as well as claiming the effort was relatively unsuccessful. Elizabeth Schrayer acknowledges, however, in her affidavit that the memorandum was sent in response to the concerns of the officers of AIPAC that certain candidates were not receiving sufficient financial support. The pattern of contributions to the Evans and Daschle campaigns and their respective state parties, however, suggests that calls to "members" associated with other Jewish PACs may have also been made. The pattern of contributions to the Licht campaign following the comments in another internal memorandum further suggests that such solicitations by AIPAC may not have been as unusual as AIPAC claims. Such communications urging persons to contribute to a particular candidate or to seek to have a particular political action committee contribute to a particular candidate are themselves a form of expressly advocating the election or those candidates.

The General Counsel concludes that the above activities that expressly advocate the election or defeat of particular candidates or that are undertaken after meetings with candidates to discuss "the details" of their campaigns and thus are done in consultation, coordination, consent, or cooperation with such candidates are activities prohibited by 2 U.S.C. § 441b unless they fit within one of the recognized exemptions to this prohibition. All of these activities consists solely of communications to persons AIPAC considers its "members." Thus, whether or not these activities violate Section 441b depends on whether or

not the persons AIPAC considers its "members" qualify as members under the Act. This brief now turns to that issue.

C. "Membership" Status of Individuals Who Belong to AIPAC

In addition to its regulation defining "members," the Commission has through previous MURs and the advisory opinion process, elaborated on factors that will support an organization's claim to the membership exception. In determining if a class of membership has the requisite "enduring and independently significant financial or organizational attachment," the Commission has considered, in light of *NRWC*, whether such persons maintain some right to participate in the governance of the organization and some obligation to help sustain the organization through regular financial contributions of a predetermined amount. *See* Advisory Opinions 1988-38, 1987-5, and 1984-22.

In addition, in Advisory Opinion 1977-67, the Commission determined that "a person can only be considered a member of an organization if he or she knowingly has taken some affirmative steps to become a member of the organization."[35] The Commission went on to indicate that "the solicitation of political contributions from members of an organization derive from the special relationship that the organization has with its members (*see* 117 Cong. Rec. 43380 (remarks of Rep. Hansen)) and that, accordingly, the

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[35] In Advisory Opinion 1977-67, the Commission noted that certain of the requester's solicitation materials asked for a financial contribution and the solicitees' support on specific issues, but did not mention the procedures whereby an individual would become a member in the organization.

membership relationship must be evidenced by the existence of rights and obligations vis-a-vis the corporation." The Commission also premised its opinion on the existence of a predetermined minimum amount for dues or contributions as a prerequisite to claiming the membership exception.

In Advisory Opinion 1982-2, the Commission considered whether it was permissible for the National Radio Broadcasters Association ("NRBA") to send letters to its members recommending that they contribute to and vote for certain candidates for Federal office. The NRBA was a trade association, incorporated in the District of Columbia as a non-profit, nonstock corporation with members. The NRBA bylaws provided for two classes of members, active and associate members. Both classes paid dues, assessments and other fees as set by the Board of Directors.

In order to be eligible for active membership in NRBA, the individual, partnership, firm, or corporation, had to be licensed by the Federal Communications Commission to operate, or to hold the permit for the construction of, a commercial AM and/or FM radio broadcast station. Active members, who were not in default of payment of dues and fees, had the right to one vote on all appropriate occasions, the right to attend all conventions and membership meetings and to comment from the floor at those meetings, the right to have a representative nominated and, if elected, to serve as a member of the Board of Directors and the right to receive NRBA's publications.

Associate members were comprised of entities licensed to operate, or holding a permit for the construction of, a noncommercial AM and/or FM radio broadcast station as well as individuals, firms and

corporations involved in any way with commercial and noncommercial AM and/or FM radio broadcast stations which were not eligible for active membership. Associate members, not in default in payment of all the required dues and fees, had the right to attend and exhibit at conventions, the right to have a representative nominated as a candidate for election as a Director-at-Large and, if elected, to serve and vote as a member of the NRBA's Board of Directors, the privilege of having a representative serve on committees when appointed and of voting at the meetings thereof, and the right to receive NRBA's publications. The Commission concluded that pursuant to the NRBA's bylaws, both its active and associate members had interests and rights to participate in the organization's direction and had an obligation to help sustain the organization through regular financial contributions. Accordingly, the Commission determined that the NRBA could send the proposed letters to both its active and associate members without either instituting or becoming a political committee.

In MUR 1604, the National Rifle Association (the "NRA") filed a complaint against Handgun Control, Inc. ("HCI") and its separate segregated fund, Handgun Control PAC ("HCI-PAC") alleging that HCI solicited individuals who did not constitute members under the Act in violation 2 U.S.C. § 441b(b)(4).[27] The

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[27] The following MURs focus on the issue of the solicitation of funds by an organization for a separate segregated fund from individuals claimed to be "members." The General Counsel notes that although AIPAC does not maintain a separate segregated fund, these MURs are relevant in resolving the membership issue concerning AIPAC.

complaint alleged that HCI-PAC contributors did not play a part in the operation or administration of the corporation, elect corporate officials, have the opportunity to attend membership meetings, receive membership cards or any regular publications or newsletters, or exercise control over the expenditure of their contributions.

The HCI bylaws provided that a member was anyone who had contributed to the organization within the past 24 months. The General Counsel's report concluded, and the Commission agreed, that there was not enough evidence to indicate the existence of any members' rights vis-a-vis the corporation. *See* General Counsel's Report dated March 6, 1984. The individuals that HCI claimed to be members did not appear to have any right to participate in the direction, policy, or management of HCI. According to HCI's bylaws, the Governing Board of HCI governed and managed the corporate affairs. Moreover, the Governing Board seemed to be self-perpetuating, and the purported members did not have an opportunity to express their views to HCI by electing corporate officials or by exercising control over the expenditure of their contributions. The General Counsel noted, however, that one privilege of membership in HCI was the receipt of HCI's newsletter, Washington Report. HCI's formal corporate documents did not provide individuals with the opportunity to attend membership meetings. The only obligation for membership provided by the bylaws was that a monetary contribution be made within two years. The contribution could be in any amount. In the General Counsel's view, contributions to HCI in various amounts at sporadic intervals did not constitute support of the

organization through regular financial contributions or a significant financial attachment required to be a member.

Moreover, the reply form attached to HCI's solicitation letter did not contain an explicit invitation to become a member. Although the solicitation urged the solicitee "to join" HCI and stated that "[e]very new contributing member we add to our ranks makes our clout against the NRA much stronger," no such discussion appeared on the reply form. The reply form did not make it clear that the individual's contribution to HCI for ideological reasons resulted in membership in HCI. Furthermore, no reference was made anywhere concerning the tenure of the purported membership. Neither the reply form nor the solicitation letter discussed any aspect of membership. Based on the foregoing facts, the Commission concluded that the individuals who were solicited for contributions to HCI-PAC did not constitute members of HCI within the meaning of the Act. Accordingly, the Commission found reason to believe that Handgun Control, Inc. and Handgun Control PAC violated 2 U.S.C. § 441b(b)(4)(A)(i).

The Commission entered into pre-probable cause conciliation with the Respondents, and in July 1984 HCI and HCI-PAC signed a conciliation agreement with admissions of the violation and a civil penalty of $15,000. As part of the conciliation agreement, HCI agreed that, as requirements for membership in HCI, it would establish a predetermined minimum amount of dues which would not be less than the current "suggested dues" and that the rights of membership in HCI would include the right to participate in annual meetings and to elect a Director to the Governing Board. HCI and HCI-PAC further agreed that

they would not solicit contributions to HCI-PAC from any individual who does not constitute a member under the Act, the Regulations or the Commission's interpretation of the Act and Regulations.

On August 22, 1984, Handgun Control, Inc. filed a complaint against the NRA, the National Rifle Association-Political Victory Fund (the "NRA-PVF") and Michael K. McCabe, as treasurer, alleging that the NRA and the NRA-PVF had solicited individuals for contributions to the NRA-PVF who were not members of the NRA within the meaning of the Act in violation of 2 U.S.C. § 441b(b)(4)(A). *See* MUR 1765. The General Counsel's Report in MUR 1765 indicated that all members of the NRA appeared to be required to pay dues as a condition of membership in the NRA. *See* General Counsel's Report dated October 15, 1984. The NRA's bylaws stipulated that "the dues or minimum contributions of each class of membership shall be fixed by the Board of Directors." The General Counsel concluded that the apparent obligation of NRA members to pay minimum dues on an annual basis should be considered to be the "significant financial attachment" required to be a member under 2 U.S.C. § 441b(b)(4)(C).

The General Counsel further stated that the requisite enduring organizational attachment between purported members of the NRA and the NRA itself also appeared to exist for the following reasons. First, the Board of Directors, elected from the lifetime members of the NRA, formulated policies and had general charge of the affairs and property of the NRA. Second, since annual and lifetime members were entitled to one vote for each vacancy on the Board, the Board was not self-perpetuating. Third, although only lifetime and annual members had the

right to cast a vote in NRA affairs, the evidence indicated that all other members of the NRA had certain other rights vis-a-via the NRA.

All members were allowed to hold membership on any committee of the NRA which "consider, debate, and recommend policies, strategies, programs, rules and activities to the NRA Board of Directors." In addition, all members had the right to attend all meetings of the Board of Directors, Executive Committee and standing and special committees of the NRA. All members of the NRA also had the "privilege" of attending and being heard at all official meetings of members. Finally, all members had the right to circulate and submit petitions for nominating Directors.

Based on the above facts, the General Counsel concluded, and the Commission agreed, that it appeared that the non-voting members of the NRA exercised some control over the expenditure of their contributions and were permitted to participate in the direction, operation and policies of the NRA. Moreover, the NRA bylaws provided for: an "Annual Meeting of Members" to be held no later than November 30, of the calendar year; the issuance of an "appropriate card, certificate or insignia" to each member as evidence of membership; and a subscription to the official journal. In addition, the General Counsel found that there were certain privileges that resulted from NRA membership which included the opportunity to compete in matches and qualify for awards as well as the opportunity to request and receive advice and assistance from the NRA related to armaments.

The General Counsel also stated that the right to vote is only one type of right vis-a-vis the corporation. Where, as in this matter, voting rights were granted

to a limited number of members of a corporation without capital stock, a close scrutiny of the other existing rights and obligations is required. In MUR 1765, the Commission concluded that the NRA provided all of its members with sufficient rights, obligations, and privileges to claim the exemption of 2 U.S.C. § 441b(b)(4)(C). Accordingly, the Commission found no reason to believe that the National Rifle Association, National Rifle Association-Political Victory Fund and Michael K. McCabe, as treasurer, violated 2 U.S.C. § 441b(b)(4)(A)(i).

On January 7, 1985, Handgun Control, Inc. filed a complaint against the Citizens Committee for the Right to Keep and Bear Arms ("CCRKBA"), the Right to Keep and Bear Arms Political Victory Fund ("PVF") and Mark Challender, as treasurer, alleging that CCRKBA and PVF violated 2 U.S.C. § 441b(b)(4)(A)(i). *See* MUR 1860. On April 17, 1985, the Commission found reason to believe that the CCRKBA, and PVF and Mark Challender, as treasurer, violated 2 U.S.C. § 441b(b)(4)(A)(i) by soliciting contributions to the PVF from individuals who did not constitute members of CCRKBA within the meaning of the Act. The Commission's determination was based upon its view that those individuals who CCRKBA considered to be members did not have sufficient rights vis-a-vis CCRKBA to constitute members under the Act and that other persons considered by CCRKBA to be its members as a result of a gratuitous membership did not take an affirmative step to become a member of CCRKBA.

CCRKBA is a non-profit corporation, organized and existing under the laws of the state of Washington. The PVF is an unincorporated political committee. CCRKBA's bylaws provided that any individual who

is in agreement with the goal of CCRKBA could become a member by completing a membership form and paying annual dues of $15, 5 years dues of $50, or life membership dues of $150. Members were issued a membership card with the members' name and number. In response to the complaint, CCRKBA indicated that its members received certain benefits and privileges including the official monthly periodical, POINT BLANK, at no charge; topical publications produced by CCRKBA, some of which addressed issues or events of particular interests in the member's particular geographic area; free advice and assistance concerning firearms and training, acquisition of firearms licenses and permits, organization and gun clubs, implementation of grassroots lobbying plans and other matters; free books, pamphlets, audio and videotapes, filmstrips and other pro-gun materials for use and distribution at various forums; use of a toll free number to request information; special prices on artifacts (key rings, mugs); and general assistance, "such as the recommendation of attorneys experienced with the laws relating to guns," and the preparation of testimony for members to deliver at municipal and legislative hearings; and the right to support the PVF.

The General Counsel concluded that the apparent obligation of CCRKBA "members" to pay minimum dues on an annual basis should be considered to be the significant financial attachment required to be a member. The General Counsel stated, however, that the requisite enduring organizational attachment between the purported "members" and the CCRKBA itself was lacking. There was no evidence of the existence of any members' rights vis-a-vis the corporation. The individuals did not appear to have any right

to participate in the direction, policy, or management of CCRKBA.

Pursuant to the bylaws, the Chairman of CCRKBA determined the policy and had the general supervision of the affairs of CCRKBA subject to the direction of the Board of Directors. Furthermore, the Board of Directors seemed to be self-perpetuating and the purported members did not have an opportunity to express their views to the CCRKBA by electing corporate officials or by exercising control over the expenditure of contributions. Although CCRKBA argued that under Washington law, each member of a membership corporation was entitled to one vote on each matter submitted to a vote to the members, there was no evidence that members had ever been afforded an opportunity to vote on any matter. Moreover, CCRKBA's formal documents did not provide its members with an opportunity to vote or to attend membership meetings. Although CCRKBA members were asked for their input by way of polls, questionnaires, surveys, petitions, and other membership involvement techniques, the General Counsel indicated that such informal input was insufficient to claim the membership exemption. In addition, the authority to make, alter, amend, or repeal the bylaws was vested in the Board of Directors. CCRKBA members had never been presented with the opportunity to elect corporate officials nor to cast a binding vote in CCRKBA affairs. CCRKBA's formal documents did not even provide its members with the opportunity to attend membership meetings.

In MUR 1860, the Commission also focused on the issue of whether those individuals considered by CCRKBA to be its members "knowingly" had taken "some affirmative steps" to become a member. The

solicitation letters and forms referred to membership in CCRKBA. A return form in CCRKBA's magazine included the language "Why not help CCRKBA to continue to grow in size by signing up at least one additional member. . . ." In response to the Commission's reason to believe findings with regard to this issue, CCRKBA indicated that recipients of gratuitous memberships were mailed a letter informing them of their gift membership thereby presenting them with an opportunity to revoke their membership and were not solicited by PVF. Accordingly, the General Counsel recommended that the Commission take no further action with respect the gratuitous memberships.

The General Counsel concluded, and the Commission agreed, that the structure of CCRKBA's organization did not provide its other purported members with sufficient rights vis-a-vis CCRKBA to claim the membership exemption of 2 U.S.C. § 441b(b)(4)(C). The Commission found probable cause to believe that the Citizens Committee for the Right to Keep and Bear Arms, the Right to Keep and Bear Arms Political Victory Fund and its treasurer violated 2 U.S.C. § 441b(b)(4)(A)(i). On June 4, 1986, the Commission accepted a conciliation agreement in this matter which included an admission of the violation, a civil penalty of $1,500, and an agreement that the Citizens Committee for the Right to Keep and Bear Arms and the Right to Keep and Bear Arms Political Victory Fund would not solicit any individual who did not constitute a "member" within the meaning of the Act.

1. Individuals Financial Attachment to AIPAC

In 1951, the American Zionist Council ("AZC") established an independent lobbying organization. In 1954, AZC formed a separate full-time lobbying organization known as the American Zionist Committee of Public Affairs, which in 1959 changed its name to AIPAC. AIPAC was incorporated in 1963 and, in AIPAC's words, became a membership organization open to individual participants in 1969.

According to its bylaws, amended and approved on November 14, 1989, AIPAC's stated purpose is to "undertake appropriate activities to maintain and further the friendship between the United States and Israel and to strengthen and promote the mutual ideals and interests of both nations, *in accordance with the views of its members.*" *See* AIPAC's Bylaws at Section 1(a) (emphasis added) (Exhibit 1 to AIPAC's Response to the Request by the Commission to Answer Interrogatories and Produce Documents). AIPAC indicates that its sole function as a registered domestic lobby is to encourage close United States-Israel relations and to provide services to its own "members."

According to its bylaws, "members" of AIPAC include:

> (1) Individuals for whom a membership application, form or card has been completed and who pay annual dues as set by the Executive Committee. In setting dues, the Executive Committee may create different categories of membership depending upon the amount of dues paid; and

> (2) The chief lay officer of each organization that is a member of the Conference of Presidents of Major American Jewish Organizations may become a member without payment of dues.

Pursuant to the bylaws, membership must be renewed on a yearly basis through the payment of dues. *See* AIPAC's Bylaws at Section 1(a). According to AIPAC, annual membership dues are a minimum of $50. Students may join by completing the membership form and paying a minimum of $15 in annual dues. The "chief lay officer" of an organization that is a member of the Conference of Presidents of Major American Jewish Organizations may join without the payment of dues. According to the supplemental information provided by AIPAC on May 7, 1990, representative organizations of the Conference of Presidents include groups such as the Anti-Defamation League; the American Jewish Congress, Hadassah; and the National Conference of Soviet Jewery. AIPAC notes that the chief lay officers are entitled to automatically serve on AIPAC's Executive Committee.[28] In supplemental information filed by AIPAC, AIPAC indicates that 45 chief lay officers currently serve on the Executive Committee in an *ad personam* capacity.

When an individual joins AIPAC, two cards are completed which pledge the payment of annual dues or a larger amount. These cards form the basis of the membership records which are maintained by AIPAC.

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[28] AIPAC indicates that while the membership of a chief lay officer is by virtue of an organizational role, the membership is held in an individual capacity. The organization itself has no status in AIPAC.

The first card is filled out entirely by the individual. The second card is partially pre-completed by computer "with name, address, and other information." Individuals who join in this manner normally do so at AIPAC meetings or other sessions where they are recruited. According to AIPAC, many individuals also join by sending in membership dues with a form from AIPAC's brochure. AIPAC notes that a "substantially smaller number" of individuals join in response to membership forms included in prospect mail solicitations. AIPAC has submitted sample membership forms and pledge cards. *See* AIPAC's Response to the Commission's Interrogatories - Exhibit 2. AIPAC's membership form states "YES! I want to support AIPAC and help strengthen the U.S.-Israel relationship. Enclosed are my basic membership dues of $50 or my larger contribution." AIPAC's sample pledge form does not refer to membership. AIPAC has also submitted its membership solicitation mailings from February 1983 through Fall of 1989. *See* AIPAC's Response to the Commission's interrogatories - Exhibit 5. AIPAC's October and November 1989 mailing states:

> AIPAC members are the key to our effectiveness—they distinguish the pro-Israel lobby from every other lobby in Washington. Members of Congress know that our membership—50,000 strong—represents a nationwide pro-Israel constituency who know the issues, demand action, and monitor the results. . . . AIPAC members invite you to join us. An AIPAC membership begins at just $50 per year. Frankly, we don't think you could get more "bang for your buck" anywhere else.

In its Summer and Fall 1986 mailings, AIPAC indicates that:

> Although AIPAC is not a political action committee (a PAC), it closely monitors each Senate and House campaign throughout the country and makes sure that every candidate, Democrat and Republican, receives factual information about Israel and its struggle. Through the *Near East Report*, which it distributes, AIPAC ensures every AIPAC member as well as members of Congress, the Administration, and the diplomatic community, hears the pro-Israel point of view.

Membership must be renewed yearly. AIPAC sends out five notices of late payment and then drops the individual from AIPAC's membership roles if payment is not made. AIPAC has submitted the following information with regard to the total number of individuals belonging to AIPAC:

Year	Members
1983	23,656
1984	33,082
1985	37,155
1986	37,195
1987	32,477
1988	36,524
1989	37,104

AIPAC notes that it used a conservative methodology to determine these numbers.[29] The above figures

[29] Each AIPAC membership application provides a space for the applicant to enter the name of the person or persons joining. In many instances, only one person is listed, yet the name of the spouse or the names of other person in the household are listed elsewhere as part of the general information

do not include the several thousand students who belong to AIPAC.[30]

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maintained on the individual who joins. In such instances, the membership figures above include only the individual actually identified on the form in the space provided for the name, even though other persons in the household may consider themselves as belonging to AIPAC. In addition, the membership form may include the name of both spouses. Only in these cases were both spouses included in the above figures.

[30] According to AIPAC's response to the Commission's interrogatories, AIPAC's fiscal year did not conform to the calendar year until 1988. From 1983 through 1986, AIPAC's fiscal year began March 1st and ended February 28th. AIPAC indicates that 1987 was a transitional year. Accordingly, 1987 was a shortened fiscal year from March 1st through December 31st. The following information provided by AIPAC includes contributions from individuals as well as contributions from persons who gave under $50. Contribution data for others is not kept separately. In 1989, approximately $190,000 of AIPAC's funds came from persons who contributed less than $50. AIPAC received the following funds in dues and contributions:

Year	Membership Dues/Contributions
1983	$4,001,748
1984	$4,998,803
1985	$5,768,895
1986	$6,136,219
1987	$6,179,044
1988	$8,926,820
1989	$9,910,632

AIPAC's additional income is limited to the following interest and income income derived from the sale of the AIPAC Monograph Series:

Year	Interest Income	Miscellaneous Income
1983	$ 70,153	$41,865
1984	$108,602	$29,171
1985	$ 47,014	$ 9,190
1986	$ 20,766	$ 2,157
1987	$ 15,471	$32,520
1988	$ 43,688	$11,885
1989	$ 76,612	$ 487

Although AIPAC's bylaws permit the Executive Committee, which acts as the Board of Directors of AIPAC, to create different classifications of membership based on the amount of dues paid, AIPAC asserts that it does not have any classifications of membership. According to AIPAC's response, AIPAC's bylaws do not entitle individuals who contribute in excess of the $50 membership dues ($15 for students) to rights in the organization that are in addition to or exclusive of the rights of all other contributors. AIPAC further notes, however, that individuals who do make contributions in excess of their annual dues are invited to participate in special programs including private briefings by AIPAC's senior staff, special dinners and receptions.

According to AIPAC, individuals who belong to AIPAC enjoy special benefits and privileges not available to others. They are entitled to receive notice of AIPAC's Annual Policy Conference where they directly participate in setting policy and direction of AIPAC by debating and voting on AIPAC's Policy Statement. The Policy Conference also offers educational and policy forums.

These individuals may also participate in local AIPAC activities including receptions with AIPAC speakers, elected officials and dignitaries. AIPAC also notes that persons interested in joining AIPAC are sometimes invited to attend these local activities. In addition, they may attend regional political work-

shops designed to encourage them to become involved in state and local politics, disseminate nonpartisan information about federal election campaigns, and educate themselves about the political process. Persons interested in joining AIPAC may attend these workshops for a fee. Since 1983, AIPAC has held numerous such workshops.

Individuals who join AIPAC may also participate in one day educational seminars in Washington which include briefings by AIPAC staff and lobbying appointments with Congress. AIPAC notes that these seminars are not available to others. Moreover, AIPAC has organized community caucuses, AIPAC's grassroots lobbying organizations, in 25 percent of the Congressional districts for these individuals. Caucuses receive topical information about U.S. foreign policy in the Middle East and candidate voting records. Caucus meetings are sometimes attended by others on an occasional and isolated basis. The following publications are also available to those who join AIPAC:

1. comprehensive information regarding voting records of Congress prepared on an allegedly nonpartisan basis (not available to others);

2. information regarding polls, political analyses, newspaper clips and candidate position papers (not available to others);

3. weekly compilation of news articles relevant to U.S.-Israel relations (not available to others);

4. Action Alerts - describing information affecting U.S.-Israel relations that recipients are asked

to contact their representatives about (also distributed to Jewish community leaders);

5. Near East Report - weekly publication (others may purchase a subscription for $30 from the publisher);

6. *Myth and Facts* - question and answer book about the Middle East (others may purchase for $4.85);

7. AIPAC Monograph - series of studies on topic relating to U.S.-Israel relationship. Complimentary copy when joining; subscription offered at rate discounted from rate offered to the public;

8. monthly legislative report (not generally available to others);

9. annual legislative report (not generally available to others);

10. topical memoranda on issues affecting the U.S.-Israel (not generally available to others).

AIPAC's membership solicitations indicate for a contribution of more than the $50 membership dues, an individual will receive additional benefits. *See* AIPAC's Response to the Commission's Request to Answer Interrogatories and Produce Documents - Exhibit 2. For a contribution of $100 or more, an individual receives Near East Report and Myths and Facts plus one of AIPAC's papers on U.S.-Israel Relations, "a monograph series on the strategic value of Israel, the campaign to discredit Israel in the U.S. and other issues of current concern." For a contribution of $500 or more, they receive all of the above

plus periodic mailings of legislative updates from AIPAC's Legislative Director and Executive Director. For a contribution of $1,000 or more, in addition to the material discussed above, they receive membership in AIPAC's Washington Club which "entitles [them] to private briefings in the AIPAC office by a member of AIPAC's senior staff. For a contribution of $3,000 or more, they receive all of the above plus membership in AIPAC's Capitol Club which entitles them to participate in "exclusive meetings and events which have included such programs as a reception with the Vice President, a reception at the State Department, and a dinner with the Israeli Ambassador." Finally, a contribution of $10,000 or more entitles them to receive all of the above plus membership in AIPAC's Senate Club. The Senate Club's programs have included "private dinners in the homes of leading Senators and other small social gatherings with members of the Senate."

2. Individuals' Rights to Participate in the Governance of AIPAC

In response to the Commissions's interrogatories concerning individuals' participation in the governance of the organization, AIPAC indicates that individuals who join AIPAC may serve as an Officer of AIPAC or on one of its committees and may vote on AIPAC's Policy Statement, its governing document, at AIPAC's annual Policy Conference. The corporate structure of AIPAC consists of the Executive Committee, the Officers, the National Council and the State Chairs. AIPAC's internal staff consists of the Executive Director, the Legislative Department, the Foreign Policy Issues Department, the Political

Department, the Development Department and the Finance Department.

a. The Executive Committee

The bylaws indicate that the Executive Committee, acting as the board of directors, controls the policy, affairs and property of AIPAC. AIPAC's bylaws - Section 2(a). The Executive Committee presently has 190 members. According to the bylaws, the chief lay officer of each organization that is a member of the Conference of Presidents of Major American Jewish Organizations is invited to serve as a member of the Executive Committee in an *ad personam* capacity. In supplemental information filed by AIPAC, AIPAC indicates that the number of chief lay officers on the Executive Committee, excluding AIPAC's President, currently stands at 45.[31] The bylaws further indicate that for each lay officer who is invited to serve on the Executive Committee, there shall be not more than 5 other members of the Executive Committee, including up to six persons who shall be appointed directly by the President. Additional Executive Committee members are nominated by the Nominating Committee and elected for a term of one year by a majority of those Executive Committee members present and voting. In selecting members to serve on the Executive Committee, the Executive Committee takes into account "political activity, support of AIPAC, community leadership and state geographical distribution." AIPAC's Bylaws at 2(c). According to the bylaws, no member of the Executive Committee

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[31] The General Counsel notes that the payment of dues requirement is waived for those chief lay officers according to AIPAC's bylaws. AIPAC's Bylaws at Section 1(a)(2).

may serve for longer than 5 consecutive terms. Any member who serves 5 consecutive terms may be re-elected after a one year's absence from the Executive Committee. The Executive Committee meets four time a year to set policy and to approve fiscal and corporate matters including budgets, bylaws, nominations and resolutions. The Executive Committee also reviews, debates, and votes on AIPAC's Policy Statement prior to the Policy Statement being submitted to the membership in attendance at the Annual Policy Conference.

According to AIPAC's response to the Commission's interrogatories, individuals who belong to AIPAC routinely communicate with the Executive Committee to urge Executive Committee members to adopt or to present to the full Executive Committee a particular point of view. AIPAC further indicates that Executive Committee members regularly offer letters or present other communication from non-Executive Committee members to the full committee for further consideration. In addition, such individuals may attend and be heard at the official meetings of the Executive Committee.

b. The Nominating Committee

The Nominating Committee is a standing committee consisting of seven members. AIPAC's Bylaws at Section 7(c). The President of AIPAC appoints the Chairman and three members of the Nominating Committee.[32] The three other members are

[32] The President also appoints two alternates to the Nominating Committe.

appointed by the Committee of Officers.[33] At least two members of the Nominating Committee must also be members of the Executive Committee. According to AIPAC, the balance of the Nominating Committee may come from AIPAC members at large.[34] AIPAC's Supplemental Response submitted on May 7, 1990. According to AIPAC, any individual who belongs to AIPAC may lobby or submit to the President or Committee of Officers the name of any other such individual to fill the five remaining seats. AIPAC's bylaws also provide that other members of the Executive Committee may submit additional nominations, as long as their submissions contain the signatures of no fewer than 20% of the members of the Executive Committee.

AIPAC indicates that each year the Nominating Committee submits its nominees for the entire membership of the National Council and Executive Com-

[33] The Committee of Officers is a standing committee which consists of the Officers of AIPAC and the Executive Director. The Committee of Officers is responsible for deciding substantive and administrative issues, choosing AIPAC's auditors, reviewing the budget, and providing guidance to the Executive Director. AIPAC's Bylaws at Section 7(b).

[34] According to AIPAC, the bylaws were modified with respect to the Nominating Committee in 1989. Before the modification, the bylaws required that two members of the Nominating Committee were to be chosen from among the Presidents of the organizations which are members of the Conference of Presidents of Major American Jewish Organizations. Since these people rarely attended or participated in Nominating Committee meetings, the bylaws were amended to omit this requirement.

mittee.[35] In addition, the Nominating Committee nominates approximately one-third of AIPAC's officers.[36] According to AIPAC, nominations for the National Council, the Executive Committee, and officers are based upon an individual's commitment to AIPAC. For example, the Nominating Committee will look to see if an individual has hosted an AIPAC fundraiser, led a Congressional Caucus, participated in grassroots educational events about the U.S.-Israel relationship, and demonstrated a financial commitment to AIPAC. Generally, the regional and national staff of AIPAC initially submit nominations. These nominations are forwarded to AIPAC's officers who review the names and submit additional nominees. Members of the Executive Committee may also submit names for nomination. AIPAC indicates that there is substantial lobbying on the part of individuals who belong to AIPAC for positions on the National Council, Executive Committee and as officers. AIPAC notes that members of the Executive Committee and National Council and officers have essentially "risen through the ranks." Moreover, leaders typically have been active on a regional basis serving first as a regional community leader, then a regional leader, and ultimately serving in a leadership position at AIPAC's national level.

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[35] AIPAC notes that members of the Executive Committee who sit by virtue of their presidency of one of the organizations that are members of the Conference of Presidents of Major American Jewish organizations are not nominated by the Executive Committee.

[36] AIPAC notes that only one third of the officers are nominated because unlike members of the Executive Committee and the National Council who serve for one year terms, officers of AIPAC serve staggered two years terms.

c. AIPAC's Officers

AIPAC currently has 23 officers including the President, the Chairman of the Board, the Chairman of the Board Emeritus, ten Vice Presidents, the Secretary, the Treasurer, and eight Regional Vice Presidents. AIPAC's Bylaws at Section 3. Officers of AIPAC are nominated by the Nominating Committee and elected by the Executive Committee. Officers serve for a two year term and may not serve more than three consecutive terms.[37] Only one third of the officers are rotated off at any one time.

d. The National Council

According to AIPAC's response, members of the National Council may only be chosen from those who belong to AIPAC. *See* AIPAC's Bylaws at Section 6. National Council members are nominated by the Nominating Committee and elected for a one year term by the Executive Committee present and voting. Members of the National Council are limited to serving for five consecutive terms. AIPAC's National Council currently has 190 members. According to AIPAC's response, any individual who belongs to AIPAC who has been duly nominated by the Nominating Committee and who has demonstrated support for AIPAC and political involvement may be elected to the National Council. AIPAC notes that although the National Council is only an advisory board, it is generally regarded as the leadership base from which individuals may proceed to the other levels of AIPAC.

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[37] AIPAC's bylaws note that if the Officer is elected President or Chairman of the Board or is serving as Chairman of the Board or as Chairman of a major committee, the officer is entitled to serve two additional consecutive terms.

In addition, AIPAC indicates that all who belong to AIPAC may circulate nominating petitions or lobby members of the Nominating Committee or the Executive Committee in support of individuals to serve on the National Council. Moreover, any such individual may attend National Council meetings, which generally occur only once a year.

e. AIPAC's Standing Committees

According to AIPAC's response to the Commission's interrogatories, any individual who belongs to AIPAC, upon appointment by AIPAC's President, may serve on one of several standing committees which directly govern specific functions of AIPAC. They lobby the President, Executive Committee or National Council to serve on these standing committees. The *Management Committee* oversees AIPAC's annual budget and internal operations. The *Strategic Planning Committee* recommends to the Committee of Officers policy objectives and strategies for implementation. The *Grassroots Committee* oversees the grassroots operation of the Political Department and its programming. The *Lobbying Committee* oversees the lobbying operation of the Legislative Department and its agenda. The *Political Education Project Committee* oversees the political activities and educational programs of the Political Department. The *Development Committee* oversees fundraising programs in support of AIPAC's operations on the local, regional and national levels. Finally, the *Cash Collections Committee* oversees the payment of membership pledges.

f. Regional Offices

AIPAC also maintains six regional offices in Florida, New York, the Southeast, the Pacific Northwest, the Southern Pacific, and the Southwest. According to AIPAC's response, each office has its own governing structure which oversees the operations. In addition, local committees assist the local and national staff in planning and implementing fundraising events, educational meetings, caucuses and workshops. Moreover, the regional governing bodies meet frequently to hear a report from AIPAC's regional and national staff and to review operations and activities of the regional office. According to AIPAC, hundreds participate in regional governing bodies.

g. State Chairs

AIPAC's State Chairs are responsible for raising funds, developing and recruiting members, and establishing relations with community leaders and officials. The State Chairs are recruited from individuals who belong to AIPAC and play a role in determining the needs of members in the states.

h. Key Contacts

AIPAC also states that such individuals participate in AIPAC as "key contacts." Key Contacts are those who have strong relationships with Congressmen, Congresswomen, and other government officials.

i. AIPAC's Annual Policy Conference

In addition to the opportunity to serve on one of AIPAC's committees, AIPAC states that each individual who belongs to AIPAC who attends AIPAC's Policy Conference may vote on AIPAC's annual Policy Statement. AIPAC's annual meeting, its Policy

Conference, is held each year in the spring and lasts from mid-day Sunday until mid-day Tuesday. In 1989, over 2,000 such individuals attended the conference. The Policy Conference includes large plenary sessions and smaller workshops.[38]

According to AIPAC, its annual Policy Statement documents and governs AIPAC's overall policy and direction. When new issues arise, AIPAC's officers, Executive Committee, and senior staff routinely consult the Policy Statement for policy guidance. *See* AIPAC's Response to the Commission's Interrogatories at 12. AIPAC's Policy Statement is initially drafted by the staff of AIPAC's Foreign Policy Issues Department. The draft is then circulated to the senior staff of AIPAC for its review and revision. *See* AIPAC's Supplemental Response submitted May 7, 1990. The draft is next forwarded to a committee of four or five members of the Executive Committee for further review and revision. AIPAC notes that although this committee is not mandated by AIPAC's bylaws, its review function has become customary in the drafting of the Policy Statement. Following the committee's review, the draft Policy Statement is then mailed to AIPAC's full Executive Committee. AIPAC mails the Policy Statement to the Executive

[38] AIPAC indicates that major figures from the Administration an Congress address the plenary sessions and at least one Israeli dignitary also addresses the conference. In addition, AIPAC holds smaller workshops that explain how to get involved in politics, the "nuts and bolts" of citizen lobbying, and in-depth examinations of topics related to the U.S.-Israel relationship. In addition, a series of individual lobbying meetings are held in which almost all the delegates participate. In 1989, AIPAC delegates attended approximately 250 appointments which members of Congress.

Committee several weeks before the actual Policy Conference to give Executive Committee members an opportunity to review the Policy Statement.

At the Sunday noon meeting preceding the opening of the Annual Policy Conference, the full Executive Committee meets to debate and discuss the draft Policy Statement in detail. After this meeting, the various changes voted upon by the Executive Committee are incorporated into a new draft. This draft is then circulated to all participants at the Policy Conference for their review. Those attending the Conference have an opportunity to debate and revise the draft of the Policy Statement. AIPAC states that the floor debates have led to substantial revisions of the draft approved by the Executive Committee. AIPAC notes, for example, that in 1985, Conference participants took vigorous exception to the proposed organizational policy on arms sales when many believed that the Policy Statement was too weak. According to AIPAC, the floor debate that ensued changed the Policy Statement. All in attendance at the Policy Conference then vote on the Policy Statement at the Tuesday noon session.

AIPAC's Annual Policy Statement sets out the policy goals for AIPAC in the coming year. For example, the 1989 Policy Statement suggests that AIPAC will strive to:

> 1. promote peace between Israel and its Arab neighbors through direct negotiations. . . .;
>
> 2. maintain the necessary levels of U.S. economic and military assistance in grants to Israel;

3. enhance strategic cooperation between the U.S. and Israel;

4. oppose the sale of sophisticated U.S. arms to Arab countries in a declared state of war with Israel;

5. support our government's efforts to work with Israel and other allies to thwart the spread of the PLO and other international terrorism;

6. increase and strengthen economic cooperation between Israel and the U.S.;

7. support efforts to end the Arab economic boycott of Israel and enforce compliance with anti-boycott laws;

8. encourage the U.S. to maintain its principled leadership in support of Israel at the United Nations;

9. ensure the right of free emigration of Jews from the Soviet Union, Syria, Ethiopia, the Yemen Arab Republic and other lands of oppression;

10. support efforts to move the U.S. Embassy from Tel Aviv to Jerusalem. . .;

11. promote an energy security strategy for the U.S. which would encourage conservation and the exploration and the development of existing and alternative energy sources in order to reduce dependence on unstable foreign sources.

See AIPAC's 1989 Policy Statement.

C. Individuals Who Belong to AIPAC Do Not Qualify as Members for Purposes of the Act

AIPAC asserts that it not only has a constitutional right to communicate its political views in connection with a federal election to its "members," but that it also has a constitutional right to "identify the people who constitute the association" as well as the "determination. . . of the structure which best allows [the association] to pursue its political goals."[39] AIPAC further claims that the Commission's regulation at 11 C.F.R. § 114.1(e), which defines "member" as "all persons who are currently satisfying the requirements for membership in a membership organization, trade association, cooperative or corporation without capital stock," is an implicit recognition of the fact that the Commission "could not constitutionally substitute its own judgment for that of an association."

AIPAC maintains that in examining whether contributors and supporters of AIPAC are "members" for purposes of the Act, "the only precedent upon which the Commission or AIPAC may rely is the regulation defining member." It contends that "Advisory Opinions offer no factually identical situation and in

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[39] AIPAC cites to cases involving political parties for its support of these propositions. They are *Eu v. San Francisco City Democratic Central Committee*, 109 S.Ct. 1013, 1021 (1989), *quoting Tashjian v. Republican Party of Connecticut*, 107 S.Ct. 544, 548 (1986), *quoting Democratic Party of the United States v. Wisconsin*, 450 U.S. 107 (1981) as well as *Tashjian*, 107 S.Ct. at 549. The General Counsel believes such cases are distinguishable in that, while they more appropriately dealt with the constitutional right of association, they apply to political party organizations rather than nonprofit corporations.

fact address only the non-constitutionally protected area of solicitations for a separate segregated fund." AIPAC further asserts that because constitutionally protected First Amendment rights are at stake in the issue, proscribed conduct must be clearly delineated in order "to give individuals a fair warning of the conduct that is required in order to prevent government officials from enforcing the law in an arbitrary or discriminatory fashion."

AIPAC adds that it has "scrupulously limited any and all communications that might remotely be considered partisan to those individuals who satisfy the requirements for membership in AIPAC, as defined by AIPAC's bylaws and as required by the FEC." It further notes:

> In addition to the fact that the quantum of communications by AIPAC that the Commission might even consider to be partisan is small, to find that AIPAC's alleged partisan communications were illegal on the grounds that they were made to individuals who failed to meet a standard for membership other than the one promulgated by the Commission would be a violation of AIPAC's members' rights as guaranteed by the First and Fourteenth Amendments of the Constitution."

AIPAC seeks to distinguish between communications soliciting individuals for contributions to a separate segregated fund and other types of communications of a partisan nature. It claims that Commission precedent and court opinions, such as *NRWC*, have only related to solicitations. AIPAC cites to a comment in *MCFL*, where the Court stated that it has "consistently held that restrictions on contributions require less compelling justifications than restrictions on

independent spending." On this basis AIPAC sees "a clear constitutional difference between the right of the government to restrict the rights of members for purposes of soliciting contributions to a separate segregated fund as opposed to restrictions affecting communications to an organization's membership."

The General Counsel notes that the statutory group to whom corporations can make "communications . . . on any subject" and the group from whom it may solicit contributions to a separate segregated fund are given parallel definitions: executive or administrative personnel and their families and members and their families. Compare 2 U.S.C. § 441b(b)(2)(A) with 2 U.S.C. §§ 441b(b)(4)(A)(i) and 441b(b)(4)(C). Furthermore, the Commission has not distinguished between communications soliciting contributions to the separate segregated fund and other communications of a partisan nature in defining the class the persons to whom such communications may be directed. See, Advisory Opinions 1982-2, 1984-13, 1987-29, and 1988-38.

The General Counsel also notes that in addressing who may receive a corporation's partisan communications, the Commission has not deferred to the corporation's own determination. Instead, in analyzing the membership issue, the Commission has examined whether the members have a significant financial and an enduring organizational attachment to the organization and a right to participate in its governance in a manner akin to that of stockholders in a corporation or members of a labor organization. *See NRWC*, 459 U.S. at 204. The Commission has also required that an individual must knowingly take some affirmative

steps to become a member of an organization. *See* Advisory Opinion 1977-67.

a. Individuals Who Belong to AIPAC Make a Predetermined Financial Commitment to AIPAC

In the present matter, it appears that most individuals who join AIPAC pay a minimum amount of $50 in annual dues. *See* AIPAC's Bylaws at Section 1(a). Student members pay a minimum of $15 in annual dues. AIPAC waives the dues payment requirement for the "chief lay officer" of organizations that are members of the Conference of Presidents of Major American Jewish Organizations. According to AIPAC's response, this waiver involves only 45 chief lay officers who also serve on AIPAC's Executive Committee.[40] With the exception of these chief lay officers, it appears that the apparent obligation of individuals to pay a minimum amount of dues to AIPAC on an annual basis constitutes a significant financial attachment.

b. Individuals Who Belong to AIPAC Take Affirmative Steps to Join AIPAC

AIPAC indicates that it enlists persons as "members" by recruitment at AIPAC meetings and by individuals' submitting membership dues with a form from AIPAC's brochure. This membership form explicitly states that a contribution of $50 or more entitles an individual to membership in AIPAC. AIPAC's pledge cards do not specifically refer to a pledge

[40] As noted earlier, AIPAC indicates that it had approximately 37,104 members in 1985.

resulting in membership in the organization. AIPAC further indicates that a small number of individuals join in response to AIPAC's mail solicitations. As noted earlier, these mail solicitations indicate that an individual becomes a "member" of AIPAC for a $50 contribution. *See* MUR 1604 and MUR 1860. The General Counsel notes, however, that 45 chief lay officers of each organization that is a member of the Conference of Presidents of Major American Jewish organizations automatically become "members" of AIPAC and its Executive Committee without paying dues or taking any affirmative steps to join. Therefore, based on the foregoing information, it appears that most individuals do take some affirmative steps to join AIPAC.

With the payment of dues, individuals are entitled to certain rights and privileges in AIPAC. They are entitled to receive notice of and participate in AIPAC's Annual Policy Conference. They may also take part in local AIPAC activities including receptions with AIPAC speakers, elected officials and foreign dignitaries. They may also attend regional political workshops and community caucuses. In addition, they may participate in educational seminars at AIPAC's headquarters in Washington. AIPAC also provides various publications, including information with regard to the voting records of Congress, to them. As indicated earlier, contributions in excess of the $50 minimum dues entitles these individuals to additional benefits such as private briefings with AIPAC staff, receptions, and dinners with Administration officials and Senators.

c. Individuals Who Belong to AIPAC Have Insufficient Rights to Participate in the Governance of AIPAC

With regard to rights to participate in AIPAC's governance, the General Counsel notes that individuals who belong to AIPAC do not vote for the Executive Committee members (AIPAC's Board of Directors), the National Council members, or the officers. They are nominated by AIPAC's Nominating Committee to serve in these positions. The Nominating Committee includes seven persons. The President of AIPAC appoints the Chairman and three members of the Nominating Committee. As noted earlier, the Committee of Officers appoints the remaining three members. At least two members of the Nominating Committee must also serve on AIPAC's Executive Committee. AIPAC indicates, however, that any individual who belongs to AIPAC may lobby or submit to the President or Committee of Officers the name of any such individual to fill the five remaining seats on the Nominating Committee.

According to AIPAC, the regional and national staff of AIPAC initially submit nominations of persons to serve on AIPAC's Executive Committee, National Council, or as an officer to the Nominating Committee. In addition, members of the Executive Committee may also submit names for nominations. AIPAC indicates that there is substantial lobbying on the part of individuals for positions on the Executive Committee, National Council, and as officers. AIPAC does not indicate, however, that AIPAC "members" may actually nominate other "members" to serve in these various positions. Moreover, the Executive Committee is responsible for electing itself, the National Council members, and the Officers of AIPAC. *See* AIPAC's Bylaws at Section 2(c), Section 3(b) and Section 6(c). Accordingly, it appears that AIPAC's Executive Committee is self-perpetuating. *See* MUR 1604 and MUR 1860.

AIPAC further states that upon appointment by the President, any individual who belongs to AIPAC may serve on several standing committees which oversee AIPAC's budgets, internal operations, grassroots activities, lobbying operation, political activities, education programs, fundraising programs, and membership pledges. Moreover, local AIPAC "members" oversee the operation of six regional offices. They work with local and national staff to plan fundraising events, caucuses, and workshops. AIPAC's State Chairs are responsible for fundraising, recruiting members, and developing relationships with community leaders.

AIPAC further asserts that individuals who belong to AIPAC participate in the governance of the organization by voting on AIPAC's Annual Policy Statement at its annual Policy Conference. They are entitled to receive notification of the conference in order to attend. According to AIPAC, those in attendance debate and revise a draft of the Policy Statement, which has previously been approved by the Executive Committee, prior to voting on it. AIPAC indicates that this Policy Statement governs the organization's overall policy and direction. Moreover, according to AIPAC, its officers, Executive Committee members, and senior staff routinely consult the document for policy guidance.

Although these individuals pay a predetermined amount of dues to the organization, they do not have

an opportunity to vote for the Executive Committee, AIPAC's governing body, the National Council, AIPAC's advisory committee, or AIPAC's officers. Although the adoption of the Policy Statement is significant, only a small portion of those who belong to AIPAC are present at the Policy Conference to vote on it. Based on the foregoing facts, it appears that such individuals do not have sufficient rights in the governance of the organization to qualify as members under the Act.

d. Conclusion

Therefore, because the General Counsel concludes the persons AIPAC considers its "members" do not qualify as members under the Act for purposes of 2 U.S.C. § 441b, the General Counsel further concludes that AIPAC's activities conducted with and in support of federal candidates involving communications to these individuals are prohibited by 2 U.S.C. § 441b(a). The General Counsel further concludes that AIPAC has not become a political committee under the Act because AIPAC's campaign-related activities, while likely to have crossed the $1,000 threshold, constitute only a small portion of its overall activities and does not appear to be its major purpose. The evidence shows that AIPAC is primarily and fundamentally a lobbying organization interested in U.S.-Israel relations and in legislation affecting Israel. Its campaign-related activities and communications are undertaken as an adjunct to, and in support of, its lobbying efforts.

D. AIPAC's Does Not Qualify for the MCFL Exemption

Because of the conclusion that those who belong to AIPAC are not members under the Act and that therefore AIPAC's campaign communications have been made outside its restricted class, the issue arises whether AIPAC qualifies for the exception to Section 441b carved out by the Supreme Court in *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986). In this case, the Court said three criteria needed to be met for nonprofit, nonstock corporations to qualify for the exception to Section 441b's prohibition:

> First, it was formed for the express purpose of promoting political ideas, and can not engage in business activities. If political fundraising events are expressly denominated as requests for contributions that will be used for political purposes, including indirect expenditures, these events cannot be considered business activities. This ensures that political resources reflect political support. Second, it has no shareholders or other persons affiliated so as to have a claim on its assets or earnings. This ensures that persons connected with the organization will have no economic disincentive for disassociating with it if they disagree with its political activity. Third, MCFL was not established by a business corporation or a labor union, and it is its policy not to accept contributions from such entities. This prevents such corporations from serving as a conduits for the type of direct spending that creates a threat to the political marketplace.

Id. at 263-64. The Court acknowledged that the class of organizations which would meet this test would likely be very small. *Id.* at 264. *See also, Austin v. Michigan Chamber of Commerce*, 110 S.Ct. 1391 (1990).

AIPAC first suggests that *MCFL* would not apply to its situation because it makes partisan communications only to its "members" and because the prohibition of Section 441b does not apply to this matter since AIPAC has not expressly advocated the election or defeat of a candidate for federal office. AIPAC further posits that even if *MCFL* were to apply, AIPAC meets the criteria established by the Court.

The General Counsel notes that the determination that individuals who belong to AIPAC are not "members" under the Act leads to the conclusion that AIPAC's partisan communications, including those coordinated with candidates, have been made to the general public. Furthermore, it would appear that some of AIPAC's communications would constitute express advocacy, in that they solicited contributions on behalf of candidates. Some were also coordinated with candidates. See *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986), and *FEC v. Furgatch*, 807 F.2d 857 (9th Cir. 1987). Therefore, it is necessary to examine whether AIPAC meets the criteria of *MCFL*.

The General Counsel notes at the outset that the Court designed the exception to Section 441b to assist small organizations which, overburdened by the reporting requirements of the Act, might be forced to limit their political speech. *MCFL* at 255. The Court described MCFL as an organization with less than 6,000 contributors, which raised its funds through

devices such as cake sales. AIPAC, however, is a large organization with more than $37,000 members in 1989 and annual revenues of more than $9,987,000 in 1989 with annual dues of at least $50 per person (except for student members). In the General Counsel's view, whether *MCFL* is meant to apply to entities such as AIPAC, an organization many times the size of MCFL, remains an open question. With this in mind, the General Counsel turns to whether AIPAC meets the three-prong *MCFL* test.

1. AIPAC's Purpose

The Commission's factual and legal analysis issued along with the reason to believe finding noted that AIPAC was a registered domestic lobbying organization "formed for the express purpose of promoting political ideas and not for conducting business activities." Thus, the Commission has previously recognized that AIPAC meets the first prong of the *MCFL* test. Its amended By-Laws describes AIPAC's purpose as undertaking "appropriate activities to maintain and further the friendship between the United States and Israel and to strengthen and promote the mutual ideas and interests of both nations, in accordance with the views of its members." AIPAC further notes that it "is funded by the annual dues of individuals who are fully aware of AIPAC's political purposes and who contribute precisely because they support those purposes."

2. Shareholders

AIPAC contends that it also meets the second prong of the MCFL test in that it "is a qualified nonprofit, incorporated membership organization that has no shareholders or members who have a claim on

any of AIPAC's assets." AIPAC has submitted an affidavit from Roy Rosenbaum, AIPAC's policy and development director since 1986. He states that his "responsibilities include reviewing the fiscal operations of AIPAC as well as AIPAC's audited financial statements." He states that AIPAC "has no shareholders or members who have a claim on any of AIPAC's assets or earnings." Thus, the General Counsel concludes that AIPAC meets the second prong of the *MCFL* test.

3. Corporate or Union Contributions

AIPAC also claims that it meets the third prong of the *MCFL* test. It states that it "was not established by a business corporation or labor organization, but began as an independent lobbying organization formed by the American Zionist Council." It only allows individuals to join the organization. AIPAC further notes that "unlike the policies adopted by other organizations AIPAC does not have a policy of actively soliciting and accepting corporate funds, whether in the form of donations or the purchase of advertising space in its publications; nor does AIPAC have a policy of openly embracing corporate members."

AIPAC acknowledges, however, that "some individual members do choose to pay their membership dues through their personal corporate accounts or have their dues paid for by other corporations." Nevertheless, AIPAC argues that such amounts are *de minimis* and that AIPAC has never regarded such payments as anything other than payments for an individual membership. AIPAC has stated that it "received 73 corporate checks in 1987 (one-half year), 159 checks in 1988 and 152 checks in 1989." It adds that these "corporate checks represent approxi-

mately 5.3%, 4.7% and 3.7% of total contributions for each respective year."[41] AIPAC also notes that there has been a limited number of corporate "patrons" listed in the Monday evening banquet program at its annual Policy Conference for 1983 through 1989. AIPAC adds that these patrons do not contribute a significant portion of the approximately $200,000 in overall costs for the Policy Conference. For instance, the list for 1989 lists nine corporations at $750 each for a total of $6,750.

AIPAC argues that to the best of its knowledge, "virtually all corporate contributions have been made by corporations owned or controlled by members of AIPAC." Thus, it posits that any corporate dues payments have been "unrelated to any business purpose or objective of the company." It adds that it "does not and would not accept a membership payment contribution or other financial support from a corporation for the purpose of influencing the policies, speech or lobbying agenda of AIPAC." Therefore, it concludes that such payments cannot serve as conduits for the type of direct spending that creates a threat to the political marketplace, citing *MCFL*.

As AIPAC acknowledges, it has accepted corporate checks for dues payments. While it may have a policy of not actively soliciting corporate contributions, it evidently does not have a policy against accepting such donations. Although AIPAC contends the amount of corporate checks it has received as "so

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[41] These calculations were based on dues payments of $500 or more for which AIPAC had copies of the checks. AIPAC notes that it "does not believe there was a significant number of corporate checks for amounts less than $500, but has no records that can confirm this."

small as to be relatively insignificant," the General Counsel does not view the Act has having any *de minimis* exception as AIPAC appears to suggest. Thus, AIPAC does not appear to satisfy the *MCFL* test.

E. Conclusion

Accordingly, based on the analysis set forth in this brief, the General Counsel recommends that the Commission find probable cause to believe AIPAC has violated 2 U.S.C. § 441b(a) and find no probable cause to believe it has violated 2 U.S.C. §§ 433 and 434.

III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find no probable cause to believe that the American Israel Public Affairs Committee violated 2 U.S.C. §§ 433 and 434.

2. Find probable cause to believe that the American Israel Public Affairs Committee violated 2 U.S.C. § 441b.

1/30/92
Date

/s/ LAWRENCE M. NOBLE
LAWRENCE M. NOBLE
General Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)
	) MUR 2804
American Israel Public Affairs Committee	)
	)

GENERAL COUNSEL'S REPORT

I. **STATEMENT OF THE CASE**

This matter was initiated by a complaint filed on January 12, 1989, by James E. Akins, George Ball, Richard Curtiss, Paul Findley, Robert J. Hanks, Rear Admiral Andrew I. Killgore (Ret.), and Orin Parker. On December 19, 1989, the Commission found no reason to believe AIPAC violated 2 U.S.C. § 441a(a)(2)(A) on the affiliation allegation. At the same time, the Commission found reason to believe that the American Israel Public Affairs Committee ("AIPAC") violated 2 U.S.C. §§ 433, 434 and 441b based on activities conducted in connection with federal elections. Regarding these alleged violations, the Commission initiated an investigation in which it posed numerous interrogatories and requests for documents to the Respondents and to other witnesses as well as collected and reviewed information filed with the Commission by federal political committees. On October 30, 1990, the Commission found no reason to believe AIPAC violated any provision of the Act on the basis of the amended complaint filed on July 23,

1990.[1] This Office and counsel for AIPAC engaged in several telephone discussions and met in September 1991 for the purpose of discussing whether AIPAC would request preprobable cause conciliation. AIPAC continued to entertain the possibility of making such a request until November 1991 when AIPAC and this Office agreed informally that the better route would be to prepare a probable cause brief.[2]

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[1] In February 1990, Edward Zuckerman and Richard Mayberry (counsel for the complainants) filed separate FOIA requests for portions of the file in this matter relating to respondents who were no longer involved in the matter. Those requests were initially denied by the FOIA office, and the requesters appealed to the Commission. This Office, in a memorandum dated July 18, 1990, recommended that the Commission uphold the FOIA officer's denial. We noted that we were prepared to recommend disclosure of the materials regarding the affiliation issue and would have done so but for the filing of the amended complaint. The Commission decided not to release the materials at that time pending resolution of the amended complaint.

Once the amended complaint was dismissed in October 1990, we submitted another memorandum, dated December 14, 1990, recommending release of the material relating to the affiliation issue. On December 18, 1990, the Commission agreed and the material was released on December 21, 1990. In February 1991, we further recommended that the Commission release tape recordings of the executive session of July 24, 1990, and December 18, 1990, pertaining to the discussion of the FOIA requests. Finally, in a March 15, 1991, memorandum we recommended that portions of the tape recording of the December 19, 1989, meeting (when the Commission made the initial findings in this matter) be released to the American Educational Trust.

[2] On November 4, 1991, the complainants in this matter filed suit against the Commission pursuant to 2 U.S.C. § 437g(a)(8). The district court issued an order that the Commission issue a final decision on the merits of the administrative complaint by 4 p.m. on May 29, 1992. That order is being appealed.

On February 3, 1992, the General Counsel forwarded a probable cause brief to the Respondent addressing all of the outstanding issues in this matter. Respondent's counsel met with staff of this Office to discuss the brief on February 28, 1992, and separately requested an extension of time to file a response, which was granted. Respondent filed its response on April 6, 1992.

II. FACTUAL AND LEGAL ANALYSIS

The General Counsel's Brief, dated February 3, 1992, is incorporated by reference into this report.

AIPAC makes three basic arguments in response to the General Counsel's recommendations. First, AIPAC argues that it is constitutionally impermissible for the Commission to define the parameters of AIPAC's internal governance for purposes of communicating with its members on any subject. Second, AIPAC contends that it meets the requirements for a membership organization under the interpretation the Commission has given to the term "members." Third, AIPAC asserts that it has made no contributions or expenditures in connection with a federal election. Each of these arguments will be separately outlined together with our response to each argument.

A. AIPAC's Constitutional Arguments

AIPAC makes an intricate and complex argument that the interpretation of the Act and its application to AIPAC set forth in the General Counsel's Brief is simply not constitutionally permissible. AIPAC argues:

> [T]here is a clear constitutional difference between the right of the government to restrict the rights of members for purposes of soliciting contributions to a separate segregated fund and restrictions affecting the internal communications among those individuals who regard themselves as members of an incorporated membership organization.

AIPAC finds support for its position in the construction and interpretation of the Act given in three Supreme Court cases: *FEC v. National Right to Work Committee*, 459 U.S. 197 (1982) ("*NRWC*"), which dealt with the definition of member for purposes of solicitations to a separate segregated fund; *FEC v. National Conservative Political Action Committee*, 470 U.S. 480, 495-96 (1985) ("*NCPAC*"), where the Court noted that *NRWC*'s upholding of restrictions on who may be solicited for contributions to a political committee is of a different constitutional stature than restrictions on expenditures to propagate its views on issues of general public interest; and *FEC v. Massachusetts Citizens for Life*, 479 U.S. 258, 259-60 (1986) ("*MCFL*"), where the Court noted that it has consistently held that restrictions on contributions require less compelling justification than restrictions on independent spending.[3] AIPAC

[3] AIPAC contends that the General Counsel seeks to avoid these constitutional distinctions by characterizing its alleged violations as in-kind contributions. It argues that its "routine" meetings with candidates to discuss U.S. - Israel relations and "the outlook of the candidate's campaign" does not mean that any action AIPAC may undertake on behalf of the candidate constitutes the kind of "prearranged and coordinated plans" that the Commission and the Act deem necessary to break the independence of any expenditure AIPAC may wish to make. It

asserts that the only recognized compelling interest permitting any impinging of associational freedom is to prevent the appearance or actuality of corruption, which AIPAC claims does not exist in its case.

Finally, AIPAC claims that the regulations concerning members and membership organizations are unconstitutionally vague because they do not provide a coherent meaning for the term member in the context of partisan communications other than solicitations. AIPAC notes:

> While an ad hoc approach to the definition of member may be permissible in the non-constitutionally protected area of solicitations for a separate segregated fund, due process will not countenance such a piecemeal approach in the highly protected area of internal communications and governance.

AIPAC concludes that "[w]hether judged by the relevant case law, the Commission's own advisory opinions, or the plain wording of the Act and the Commission's regulations, the Commission has no authority to dictate AIPAC's internal governance or otherwise restrain the content of AIPAC's internal communications."

We do not find AIPAC's arguments for special treatment of partisan communications to be convincing.

First, we would point out that the Commission is not dictating to AIPAC how to formulate its internal organization. AIPAC has a choice of how it wishes to be governed internally. The only issue here is what

then argues that even if it has made in-kind contributions, a violation of Section 441b must include facts that show "some express advocacy" in connection with the communication.

impact AIPAC's chosen internal organization has under the Act. Moreover, it is the Commission's responsibility to determine who qualifies as a member under the Act. To accept what AIPAC appears to be arguing, i.e., that the Commission should defer to the organization's own treatment, would in effect reinstate the approach NRWC advocated. Clearly, the Court intended otherwise.

We are also not persuaded by AIPAC's arguments that the Constitution requires a more expansive interpretation of the term "members" for purposes of partisan communications by an incorporated organization than the interpretation given that term for the purposes of soliciting contributions to a separate segregated fund. First, AIPAC does not present a persuasive case that Congress intended the term "member" to mean one thing for partisan communications and another for solicitations to a PAC, especially when the same term is used within the same statutory framework that addresses the same subject matter: political activity undertaken to influence federal elections. In our opinion, AIPAC's reliance on Supreme Court cases involving political party organizations is also misplaced. The Court has recognized a distinction between political committees and organizations, even if incorporated, on the one hand and corporate membership organizations and other corporations, on the other hand. *See, e.g., NCPAC*, 470 U.S. at 495 (distinguishing *NCPAC* and *NRWC*). AIPAC's reliance on Justice O'Connor's concurring opinion in *Roberts v. United States Jaycees*, 468 U.S. 609 (1983) ("*Roberts*"), is likewise misplaced. In *Roberts*, the Court said that state law banning discrimination on the basis of gender could be constitutionally applied to the Jaycees, a membership or-

ganization, because the state law served a compelling interest in eradicating discrimination against women even though the statute infringed on the organization's right to decide its own internal affairs. Justice O'Connor disagreed with the Court's application of the compelling interest test and instead argued that the issue should be viewed as one involving commercial speech and association, which she posited enjoyed substantially less constitutional protection.

Second, to the extent that the Supreme Court has examined this issue, it has given no indication of support for AIPAC's argument. The decision in the *NRWC* case did not suggest that a different interpretation of "members" would apply for communications that did not solicit contributions to a PAC. The Court also did not give any indication it would treat partisan communications by a corporation differently than solicitations when it decided *NCPAC* or when it carved out the special exemption for a limited number of membership organizations in *MCFL*.

Third, we note that in *Pipefitters Local Union No. 562 v. United States*, 407 U.S. 385 (1972) ("*Pipefitters*"), the Court said the same rationale that permitted a membership organization to communicate with its members also supported allowing such an organization to solicit them for voluntary contributions to a separate segregated fund. The Court quoted statements during debate on the 1971 Act by Rep. Hansen who, with the Act's exception for internal communication in mind, said:

> every organization should be allowed to take the steps necessary for its growth and survival. . . . If an organization . . . believes that certain candidates pose a threat to its well-being or the

> well-being of its members or stockholders, it should be able to get its views to those members or stockholders.

Id. at 431 n.42. The Court then stated that "[t]his reasoning, of course, applies as well to solicitations for contributions to voluntary political funds." *Id.* This observation by the Court in *Pipefitters* suggests that the term "members" should be given a similar interpretation for partisan communications and for solicitations. Furthermore, in *United States v. International Union United Automobile, Aircraft and Agricultural Implement Workers of America*, 352 U.S. 567 (1957) ("*Automobile Workers*"), the Court stated that the predecessor to Section 441b was intended to prohibit "the use of corporation or union funds to influence the public at large to vote for a particular candidate or a particular party." *Id.* at 589. The Court further noted that whether a communication was made to an organization's membership or to the public at large was, in the first instance, a question of fact. *Id.* at 592.

Fourth, in response to AIPAC's argument on the compelling interest test, we note that the Court has also said that the strictures of Section 441b serve to prevent a different type of corruption than the customarily financial *quid pro quo*. These strictures also serve to prevent the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas. *See, e.g., Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652, 659-60 (1990) ("Austin"), and *MCFL*, 479

U.S. at 256-58.[4] These concerns also apply to large incorporated membership organizations, such as AIPAC, that have amassed large aggregations of funds. The General Counsel's Brief notes that in 1989 AIPAC had revenues approaching $10 million. Because AIPAC accepts dues payments made on behalf of individual members by for-profit corporations, it could (without the strictures of Section 441b) "serve as a conduit for corporate political spending." *Austin*, 494 U.S. at 664. We would acknowledge, however, that AIPAC's dues probably correlate with support for its political ideas in that those who disagree with AIPAC's positions will quit the organization.

AIPAC also claims that the Commission has recognized a distinction between solicitations for a separate segregated fund and other partisan communications in several advisory opinions, the most recent of

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[4] In *MCFL*, the Court noted:

> We have described that rationale in recent opinions as the need to restrict "the influence of political war chests funneled through the corporate form," *NCPAC*, 470 U.S., at 501; to "eliminate the effect of aggregated wealth on federal elections," *Pipefitters*, 407 U.S., at 416; to curb the political influence of "those who exercise control over large aggregations of capital," *Automobile Workers*, 352 U.S., at 585; and to regulate the "substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization," *National Right to Work Committee, supra*, at 207.
>
> This concern over the corrosive influence of concentrated corporate wealth reflects the conviction that it is important to protect the integrity of the marketplace of political ideas.

479 U.S. at 257.

which is Advisory Opinion 1987-29. AIPAC also cites to other advisory opinions where it claims the Commission recognized this distinction, such as Advisory Opinions 1977-67, 1982-2, 1984-23, and 1985-11. Counsel acknowledges that Advisory Opinions 1977-67 and 1982-2 were issued prior to the NRWC decision, but refers to a citation to these opinions in Advisory Opinion 1985-11 as indicating that they still retain precedential value. Since Advisory Opinion 1985-11 addressed the solicitability of a class of persons for contributions to a separate segregated fund, its citation of these two opinions does not support AIPAC's point that the Commission has made a distinction between partisan communications and solicitations. Advisory Opinion 1985-11 was pointing out a distinction between its situation and those presented in the earlier pre-*NRWC* opinions. Such citation should not, necessarily, be interpreted as saying that the Commission would reach the same result on the same facts after *NRWC* as AIPAC appears to claim.[5]

Advisory Opinion 1984-23 also cannot be read as supporting AIPAC's contention. In the consideration of this opinion, the Commission rejected a draft proposal from this Office that would have drawn a distinction between communications that solicit contributions to a PAC and other types of partisan communications. The Commission permitted the publication of a partisan communication in a regularly issued newsletter sent out by the requester because the number of nonmembers who received the newsletter was *de minimis*. It did not permit the publication of the same message in the monthly magazine because

[5] See discussion of Advisory Opinions 1977-67 and 1982-2, *infra*.

its circulation beyond the membership was more than *de minimis*. In reaching this result, the Commission did not base its decision on a different view of membership requirements for purposes of partisan communications that do not solicit a contribution, but was instead taking into account the realities when a partisan message is included in a regular publication of an organization that does have members under the Act. See also, First General Counsel's Report in MUR 3474.

In reference to Advisory Opinion 1987-29, AIPAC finds significance in the fact that the opinion, in reaching a conclusion the requester could make a partisan communications to its members for contributions to candidates, did not analyze the "more restrictive membership criteria that applies to the solicitation of contributions from members for the benefit of the organization's separate segregated fund." The obvious answer to this argument is that the opinion did not engage in this analysis because the Commission has not formulated different membership requirements based on the distinction between solicitations to a PAC and other partisan communications, including those soliciting for contributions to candidates.[6]

In sum, we disagree with AIPAC's argument that the Constitution compels a different definition of membership for partisan communications than for solicitations to an organization's separate segregated

[6] We note that in Advisory Opinion 1984-22, at footnote 3, [which AIPAC cites later in its brief on another issue] the Commission indicated that it would give a similar definition to "members" for partisan communications as it would for solicitations to a separate segregated fund.

fund or that the Commission has recognized such a distinction in its prior rulings.

B. Definition of Members

AIPAC also contends that since the *NRWC* decision the Commission, without benefit of adequate notice and rulemaking proceedings, has transformed the Court's suggestion of a significant financial *or* organizational attachment into a significant financial *and* organizational attachment. It argues that once the General Counsel acknowledges that persons take affirmative steps to join AIPAC and make a significant financial attachment, it defies the common meaning of *NRWC* to assert AIPAC is not a membership organization by claiming that individuals do not have sufficient rights to participate in the governance of AIPAC.

Furthermore, AIPAC contends that individuals do have a right to vote by approving the annual policy statement at the annual meeting, a right AIPAC notes is affirmatively guaranteed in its by-laws, although the law of the District of Columbia for nonprofit corporations vests no voting rights in members unless the organization's corporate documents specifically grant such a right. AIPAC contends that individuals have the opportunity, by vote, to formulate AIPAC's agenda and to structure the focus of its lobbying activities for the coming year by the adoption and ratification of the annual policy statement, the central purpose of the annual meeting, which AIPAC contends occurs in a carefully structured and deliberative process.

It notes that the statement of purpose in its by-laws provides that AIPAC is to maintain and further the friendship between the United States and Israel and

to strengthen and promote mutual ideals and interests in both nations "in accordance with the views of its members." AIPAC has described the annual policy statement as the "guiding document of the organization" that is "routinely consulted by AIPAC officers" and "universally regarding as binding on the policies and direction of the organization." It further notes that the principles in the policy statement are the basis on which individuals "choose to join or leave the organization."

AIPAC further characterizes itself as "the paradigm of a highly motivated grass-roots membership organization." It argues that in addition to the right to vote on the policy statement, AIPAC's organizational framework provides numerous means through which individuals may participate in the governance including many mentioned in the *NRWC* opinion, such as a network of key contacts, state chairs, regional boards, standing committees, and governing boards in which individuals play an integral role. AIPAC points out that individuals have a right to attend meetings of the Executive Committee, the National Council, and all standing and special committees, the right to attend and be heard at the annual policy conference, and the right to circulate and submit petitions for nomination of members to the various committees of AIPAC.

AIPAC adds that its by-laws specifically provide for members and an annual meeting of members and that its pledge forms, receipts and solicitation materials specifically refer to members as well as the right of members to receive special publications and participate in special AIPAC activities including regional political workshops, educational seminars, and community caucuses. AIPAC argues that these addi-

tional rights of its members are far more meaningful than those found sufficient in MUR 1765, involving the NRA, and in MUR 1982-2. It also finds support for its position in Advisory Opinions 1977-67 and 1984-22 as well as MUR 1860. We will first address these opinions and enforcement matters and will then address AIPAC's arguments why individuals who belong to it have sufficient indicia of membership for purposes of the Act.

We note that Advisory Opinion 1977-67 dealt with whether a certain group of persons were members of the Public Service Research Council for purposes of being solicited to the Public Service Political Action Committee. The Commission concluded that persons meeting these criteria would be solicitable because they: (1) made an affirmative step to join the organization evidenced in writing; (2) participated in a yearly membership survey, which the board considers in governing the organization; (3) pay dues at regular intervals in a predetermined amount; and (4) receive a waiver of dues only on the basis of predetermined criteria.

Most importantly, the emphasis in the opinion on the ability to participate in membership surveys as a means to demonstrate a right to participate in the governance of the organization should no longer be viewed as adequate. Even if this opinion is not viewed as superseded on this point, we would be reluctant to give much weight to such surveys given the current plethora of solicitations in the form of surveys being used by a wide variety of organizations. To do so would make it difficult to distinguish a true membership organization from a direct mail operation. In distinguishing this opinion, however, we are not equating AIPAC's policy statement with a membership

survey or suggesting that AIPAC is merely a direct mail operation. We are merely pointing out the inadequacy of the opinion as precedent on the membership issue.

Advisory Opinion 1982-2 dealt with a proposed partisan communication, urging support for the contributions to specific candidates, that the National Radio Broadcasters Association ("NRBA") planned to send to its active and associate members. Active members were entities licensed by the Federal Communications Commission ("FCC") for commercial AM and FM stations. Active members possessed the right to one vote on all appropriate occasions, the right to attend all conventions and membership meetings and to speak at them, and the right to have a representative nominated to the Board of Directors. Associate members included entities licensed by the FCC for noncommercial AM and FM stations as well as other entities engaged in the business of commercial or noncommercial radio broadcasting which were not otherwise eligible for active membership. Associate members had the right to attend and exhibit at conventions, the right to have a representative nominated as a Director-at-Large and serve on the board of directors, and the privilege of having a representative serve on committees.

The opinion concluded that both active and associate members were members who could receive the partisan communication. In reaching that conclusion, the opinion cited Advisory Opinion 1977-67 and noted that it suggested that a sufficient indicia of a membership relationship must exist between an organization and a group of persons for those persons to be considered members under the Act. The opinion noted that both active and associate members of NRBA

have interests and rights in the organization, assume some right to participate in the organization's direction, and have an obligation to help sustain the organization financially.

As noted, this opinion relied heavily on Advisory Opinion 1977-67. Both opinions were issued prior to the *NRWC* decision. In recognizing the emphasis in the *NRWC* decision on whether members of membership organizations have rights analogous to those of stockholders in corporations and members of labor organizations, the Commission has placed considerable emphasis on a person's having a right to vote for the officers or directors of an organization as well as a financial obligation in order for such persons to qualify as members for purposes of the Act. Nevertheless, we do note that associate members of NRBA had the right to have a representative nominated and elected to the board as a Director-at-Large. Moreover, noncommercial stations could only be associate members. Other associate members were limited to those engaged in the business of commercial or noncommercial radio broadcasting. Thus, the associate members had a strong economic reason for joining NRBA that was more paramount than NRBA's political activities. Also, by establishing criteria for membership that restricted the potential membership, active or associate, NRBA did not have the potential of opening the door to membership to "include anyone who has responded to one of the corporation's essentially random mass mailings." *NRWC*, 459 U.S. at 204.

Advisory Opinion 1984-22 dealt with whether various classes of persons associated with the American Stock Exchange ("Exchange") qualified as members for purposes of the Act in order to be solicitable for

contributions to the Exchange's separate segregated fund. The Commission agreed that the options principal class qualified for membership even though they did not possess a right to vote for board members because they had a right to be elected to the board, to serve on the Exchange's standing and disciplinary committees, a regular financial obligation, and floor trading privileges. The Commission could not agree on whether the associate class qualified as members. They had the same rights as options principals, except that they lacked floor trading privileges. Thus, the Commission limited the class of persons qualifying as members to those who had trading privileges on the floor of the Exchange by according some weight to these economic ties to the organization, which also serve to place a limit on the universe of potential members. On its facts, the circumstances addressed in this opinion are clearly distinguishable from AIPAC. Thus, we find little in this opinion to support AIPAC's argument on the membership issue.

In MUR 1765, the Commission addressed whether the persons solicited by the National Rifle Association ("NRA") for contributions to its separate segregated fund were members under the Act. The facts relating to this matter are set out in more detail in the General Counsel's Brief at pages 71-73. The First General Counsel's Report, dated October 15, 1984, concluded that all persons solicited by the NRA were members, relying on Advisory Opinion 1977-67 and *NRWC*. The report noted that all classes of members provided for in the by-laws were required to pay dues in order to be eligible to vote. It further noted that although only annual and lifetime members have a right to vote for the board of directors, which sets the policy and governs the NRA, other members had

rights within the organization, referring to Advisory Opinion 1977-67. These other rights included the right to hold membership on any committee and recommend policies, etc., to the board, the right to attend all meetings of the organization and the board and being heard at official membership meetings, and the right to circulate and submit petitions for nominating directors. With reference to *NRWC*, the report concluded members had additional rights that included a guaranteed annual meeting, the issuance of a membership certificate, and a subscription to the official journal as well as the opportunity to compete in matches and to receive advice and assistance related to armaments. Also, because of the manner in which NRA's board was chosen, the board was not self-perpetuating.

MUR 1860 addressed the question of membership for the Citizens Committee for the Right to Keep and Bear Arms ("CCRKBA"). The facts relating to this matter are also set out in more detail in the General Counsel's Brief at pages 73-77. The Commission concluded in MUR 1860 that the purported "members" of CCRKBA did not have adequate rights to participate in the governance of the organization. The board of directors was self perpetuating, and "members" had no right to elect corporate officers or to control corporate expenditures as well as no right to vote on corporate matters or attend membership meetings. The General Counsel found the use of surveys, polls, questionnaires, and petitions to provide input from the purported "members" was insufficient to demonstrate an adequate right to participate in the governance of the organization.

We remain unpersuaded by AIPAC's arguments, although we do recognize that it is a close question

whether persons who belong to AIPAC qualify as members for purposes of the Act. We acknowledge that it appears any person who belongs to AIPAC may attend and participate in its annual Policy Conference. Besides including speeches and briefings, the Policy Conference is also the event AIPAC uses to have those attending personally lobby Members of Congress on behalf of AIPAC's goals. Attendees also have the opportunity to debate and vote on the Policy Statement, which AIPAC asserts governs the organization for the next year and is regularly consulted by the Executive Committee, Officers, and staff.[7] We acknowledge that the Policy Statement plays a more important role in governing AIPAC that the kind of membership surveys and questionnaires involved in Advisory Opinion 1977-67 and MUR 1860. We also recognize that any "member" who attends the Policy Conference may debate and vote on the Policy Statement.

AIPAC also has an array of regional boards, standing committees, state chairs, and key contacts that offer individuals an opportunity to participate in AIPAC's affairs. Individuals also have the right to attend meetings of the Executive Committee, the National Council, and all standing and special committees. They also may circulate and submit petitions for nomination to any AIPAC office including the Nominating Committee and the Executive Committee. In short, AIPAC offers ample opportunity to those who seek to become more involved in AIPAC's affairs to do so. Through such involvement, AIPAC

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[7] Sample Policy Statements were circulated as attachments to CIR #2, dated August 22, 1991, at pages 6-38.

asserts that individuals often become eligible and nominated for the Executive Committee.

The Executive Committee, however, governs AIPAC and elects its officers. The Executive Committee also elects its own members, though no person can serve more than five consecutive one year terms. Furthermore, while the Executive Committee consists of 250 persons (a sizable number), we note that in 1989 AIPAC indicated it had 37,104 "members." Thus, this number represents less than one-tenth of one percent of the number of claimed "members."

We would further note that while stockholders in a corporation have a right to vote for directors, they do not have a right to set policy for the corporation. That policymaking right resides with the board of directors. Thus, in terms of an analogy to stockholders, persons who belong to AIPAC who attend the Policy Conference and vote on the Policy Statement have a qualitatively different means of participating in the governance of the organization than do stockholders in a corporation. This statement may represent the views of those voting on it for the benefit of the Executive Committee, officers, and staff, but persons who belong to AIPAC do not appear to be able to make it legally enforceable or binding on AIPAC. Nevertheless, AIPAC cannot escape that fact that the membership at large has no right or opportunity to elect persons to the Executive Committee or to elect AIPAC's officers. It is the absence of this right in the membership at large that we find most troublesome. In our view to treat all 37,000+ persons as members of AIPAC for purposes of the Act would indicate that the Commission is no longer using voting rights as a bright line test to establish membership under the Act.

We would, however, acknowledge that the 250 members of the Executive Committee would qualify as members for purposes of the Act since they do possess a right to elect officers and other members of the Executive Committee. Therefore, we conclude that any recognition that AIPAC has members should be limited to those who serve on the Executive Committee.[8]

C. AIPAC's Activities

AIPAC further argues that even if the Commission should find against it on the constitutional and membership issues, it should still find that AIPAC's activities described and questioned in the General Counsel's Brief do not constitute a violation of 2 U.S.C. § 441b. In this regard, AIPAC contends that the Supreme Court and lower federal courts have construed the "in connection with an election" language of 2 U.S.C. § 441b to require express advocacy and argues that the General Counsel is recommending a probable cause finding without evidence of express advocacy. In a footnote, AIPAC further asserts that because Section 441b uses contribution or expenditure interchangeably for the purpose of that section, that the "in connection with" standard enunciated by the courts "is applicable to both terms."

Moreover, AIPAC contends that its contact with federal candidates (which it describes as "brief") that included a discussion of the status of their campaigns does not indicate any cooperation, consultation, or prearrangement between AIPAC and the candidates

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[8] This conclusion does not rule out recognizing a broader category of members if voting rights are extended beyond the Executive Committee.

that would result in AIPAC's activities relating to such candidates being considered coordinated with them. AIPAC argues that there is no evidence that it made any expenditure in cooperation, in consultation, in concert, or at the request or suggestion of any candidate or based on information provided by the candidates with a view toward AIPAC making such expenditures. It cites to statements in affidavits by several campaign fundraisers that state that AIPAC never provided direct assistance to the campaign and "to their knowledge" never provided indirect assistance by "instructing" persons to contribute to specific campaigns. AIPAC claims that if the Commission were to find probable cause based on these circumstances, every fundraising event in Washington, D.C., would be called into question.

AIPAC then reviews specific communications or activities questioned in the General Counsel's Brief and claims that with one exception they did not involve express advocacy and therefore cannot provide a basis for a violation of Section 441b. With regard to the Campaign Updates, AIPAC argues that they are merely issue discussions and analysis and outside the purview of the Act, especially since they do not contain any express advocacy. AIPAC also takes issue with the references in the brief to the affidavits from fundraisers and others that AIPAC staff has put candidate fundraisers and AIPAC supporters in touch with each other and refers to the statements in the affidavits quoted above in the previous paragraph.

With regard to the Morton Friedman instance where AIPAC provided Friedman with a sample solicitation letter, a candidate position paper and a list of Jewish PACs, AIPAC argues that since Friedman at that time was a voting member of AIPAC's Exec-

utive Committee, he would meet even the criteria for membership set out in the General Counsel's Brief. While apparently conceding that the regulations regarding the distribution of a candidate's campaign materials would arguably include a candidate's position paper, AIPAC contends that this regulation was aimed at mass reproduction and distribution, and not the sending of a single issue paper on request. AIPAC further asserts that the Commission should not construe the regulation to preclude an organization from communicating with its board of directors of issues of concern, but that even if that were the case, there was no express advocacy within the position paper itself.

AIPAC appears to concede that the activity described in the Schrayer memorandum may qualify as express advocacy in that it indicates an AIPAC staff person contacted persons who belong to AIPAC who were associated with various Jewish PACs to urge them to contribute to specific federal candidates. AIPAC, however, describes this activity as "rare and isolated instance" that cannot be valued and that could arguably fall within the "safe harbor volunteer exemption" of 11 C.F.R. § 114.9(b). It dismissed the Amouyal memorandum as indicating nothing but issue advocacy, and that the pattern of contributions by Jewish PACs noted in the General Counsel's Brief does not prove that AIPAC's efforts to generate contributions from Jewish PACs to federal candidates occurred more often than the one instance represented by the Schrayer memorandum.

We disagree with AIPAC's attempt to impose an express advocacy standard for judging all of its political activities on behalf of candidates. As noted above, AIPAC acknowledges that it routinely meets

with candidates [because they are candidates] and, in addition to discussing the candidate's views on Middle East issues, also discusses campaign strategy and fundraising needs and goals with the candidate. In our view once AIPAC has held such meetings and discussions with a candidate, any subsequent activity or communication AIPAC undertakes regarding that candidate that goes beyond its "members" under the Act would have to be viewed as activity or communications undertaken in coordination or consultation or in concert with the candidate and the candidate's campaign. AIPAC cannot separate what it knows about a candidate's campaign from what it does on behalf of such a candidate. Because such activity or communication would then constitute an in-kind contribution to the candidate, we do not believe an express advocacy standard is appropriate or required.

In our brief we identified certain communications by AIPAC that we believe present a violation under the Act when they are addressed to persons outside AIPAC's membership as it is defined under the Act or involve activities that are directed to such persons. First is AIPAC's acknowledged role of acting as a contact between its purported members and candidates or their fundraisers by either putting them in touch with each other or suggesting who to contact.[9] While it is difficult to measure the value of such activity, its importance should not be minimized. Whenever AIPAC undertakes such activity, it is clearly indicating a candidate is favored. Second is the collection and distribution of candidate position

[9] The affidavits that are at issue on this point are reproduced at Exhibits 18 and 21 of AIPAC's response to the complaint, dated March 20, 1989.

papers, which is essentially the republication or distribution of campaign material.[10] Although AIPAC attempts to downplay this activity by claiming it is only sending them out one at a time, usually on request, it still remains that AIPAC routinely collects and maintains this information. Commission regulations specifically state that republication of a candidate's campaign materials is a corporate contribution regardless of whether they are sent to members or beyond. 11 C.F.R. § 114.3(c)(1).

Third is the preparation and distribution of the yearly "campaign update" that covers the voting record and position of incumbents and rates their election prospects and fundraising status to the extent that the updates reflect what AIPAC has learned about the campaigns from its meetings with candidates.[11] It is clearly written to indicate who should or should not be supported and where contributions would do the most good from AIPAC's standpoint. Fourth is AIPAC's efforts to contact purported members who are also associated with one of the Jewish PACs to urge financial support for specific candidates. AIPAC also seeks to downplay this activity by acknowledging it only for those instances that have come to light and treating them as isolated and not particularly successful. In our view it is only necessary to establish the fact AIPAC did make such contacts to show a violation. How frequent or how successful such contacts may have been goes more to

[10] Sample candidate position papers were circulated as attachments to CIR #2, dated August 22, 1991, at pages 111-119.

[11] Excerpts from the campaign updates dated May 1987 and May 1988 are at Exhibit 25 of AIPAC's response to the complaint, dated March 20, 1989.

the severity of the violation. Because the investigation in this matter has focused on whether AIPAC has acted in conformity with the Act covering a wide range of activities, we recognized that we had limited resources to probe all of AIPAC's specific activities.

Since we acknowledge that the persons making up the Executive Committee would qualify as members under the Act, we would agree that AIPAC may communicate to this group of persons on any subject. This conclusion would also cover AIPAC's providing Morton Friedman with a sample solicitation letter and other information since AIPAC maintains he was a member of the Executive Committee at that time. We would also acknowledge that some [but not all] of the persons to whom AIPAC made the partisan communications described above were probably members of the Executive Committee at the time of AIPAC's communications. Nevertheless, there is no evidence that AIPAC sought to limit such communications to members of the Executive Committee, and AIPAC has made no such claim, except in the case of Friedman. As noted, many of the persons associated with Jewish PACs also have belonged to the Executive Committee. But the make-up of the Executive Committee was constantly changing, so that at any one time a substantial number of the persons associated with Jewish PACs who may have received partisan communications were not members of the Executive Committee. Therefore, we conclude that these questioned communications went to persons outside the defined group of members.

Accordingly, we recommend that the Commission find probable cause to believe AIPAC violated 2 U.S.C. § 441b. For the reasons stated in the brief, we also recommend that the Commission find no probable

cause to believe AIPAC violated 2 U.S.C. §§ 433 and 434.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATIONS

1. Find no probable cause to believe that the American Israel Public Affairs Committee violated 2 U.S.C. §§ 433 and 4343.
2. Find probable cause to believe that the American Israel Public Affairs Committee violated 2 U.S.C. § 441b.
3. Approve the attached conciliation agreement
4. Approve the appropriate letter.

5 29 92 — /s/ LAWRENCE M. NOBLE
Date — LAWRENCE M. NOBLE
General Counsel

Attachment
Conciliation Agreement